LEGISLATIVE ASSEMBLY OF ALBERTA

Select Special Conflicts of Interest Act Review Committee

Review of the *Conflicts of Interest Act*

Twenty-Eighth Legislature
First Session
November 2013

COMMITTEES
OF THE LEGISLATIVE ASSEMBLY

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SELECT SPECIAL CONFLICTS OF INTEREST ACT REVIEW COMMITTEE

November 2013

To the Honourable Gene Zwozdesky
Speaker of the Legislative Assembly
of the Province of Alberta

I have the honour of submitting, on behalf of the Select Special Conflicts of Interest Act Review Committee, its final report containing its recommendations on the *Conflicts of Interest Act* for consideration by the Legislative Assembly of Alberta.

Sincerely,

[Original signed by Chair]

Jason Luan, MLA
Chair, Select Special Conflicts of Interest Act
Review Committee

c. Dr. David McNeil
Clerk of the Legislative Assembly

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MEMBERS OF THE SELECT SPECIAL CONFLICTS OF INTEREST ACT REVIEW COMMITTEE

28th Legislature, First Session

Jason Luan, MLA[1]
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Sohail Quadri, MLA[9]
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Joe Anglin, MLA[11]
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Dr. Neil Brown, QC, MLA[12]
Calgary-Mackay-Nose Hill (PC)

[1] Chair from November 4, 2013
[2] Deputy Chair from November 4, 2013; Committee Member from October 23, 2012
[3] Committee Member and Chair to October 28, 2013
[4] Member from November 4, 2013
[5] Substitution for David Dorward on November 27, 2012
[6] Substitution for Jacquie Fenske on September 13, 2013 and for Everett McDonald on January 28, 2013
[7] Substitution for Jacquie Fenske on October 11, 2013
[8] Substitution for Everett McDonald on December 11, 2012
[9] Substitution for Everett McDonald on August 27, 2013
[10] Substitution for Rachel Notley on December 11, 2012
[11] Substitution for Shayne Saskiw on August 27, 2013
[12] Substitution for Steve Young on August 27, 2013

Members also in Attendance:

Joe Anglin, MLA[13]
Rimbey-Rocky Mountain House-Sundre (W)

[13] September 3, 2013

1.0 EXECUTIVE SUMMARY

The Select Special Conflicts of Interest Act Review Committee makes the following recommendations, including suggested amendments to the *Conflicts of Interest Act* (the "Act") where necessary to implement the recommendation.

Interpretation of the Act

1. That the third and fourth recitals of the preamble be incorporated into the body of the Act itself, and that the concept of requiring Members to act "lawfully" or "in accordance with the law" also be included in the section.

2. That the term "adult interdependent partner" be included within the definition of "spouse" in s. 1(1)(l).

Obligations of Members

3. That s. 7 be reworded to clarify that the receipt of any fee, gift, or other benefit, regardless of dollar value, is prohibited if it is directly or indirectly associated with the performance of a Member's office.

4. That s. 7(2.1) be amended to clarify that gifts or non-monetary benefits received from a political party or constituency association must also be permitted under the *Election Finances and Contributions Disclosure Act*.

5. That s. 7.1 be amended to require Members to request approval from the Ethics Commissioner, where practical, prior to the acceptance of a flight on a non-commercial aircraft. Under circumstances where it is not possible or practicable to contact the Ethics Commissioner to seek approval prior to taking the flight, the provision in s. 7(1)(3)(b) should be retained to allow the Member to provide subsequent timely disclosure to the Ethics Commissioner.

6. That s. 19 be amended to entitle Members to reimbursement for the cost of transferring a mortgage, line of credit, or other account from ATB Financial to another financial institution pursuant to s. 8(1)(a), that the authority to reimburse the transfer costs be given to the Office of the Ethics Commissioner and that such reimbursements be made through the budget of the Office of the Ethics Commissioner as a separate line item.

Managing Investments and Businesses

7. That s. 20 be amended to give the Ethics Commissioner the ability to approve investment arrangements that include the necessary components of a blind trust without requiring a formal blind trust to be established.

8. That s. 21 be amended to allow Ministers and the Leader of the Official Opposition to establish management trusts to carry on a business provided that they are not allowed to participate in discussions or vote in meetings on matters that could affect that business's interests.

Disclosure

9. That s. 11(1) be amended to allow the Ethics Commissioner to prescribe the manner in which private disclosure statements can be filed so as to allow for the eventuality of filing such statements electronically.

10. That the Act be amended such that if information is withheld from a Member's public disclosure statement under s. 14(7), the statement must include a notation indicating that information was withheld under that section.

11. That s. 15(3), which requires Members to file a final direct associate return after leaving office, be repealed.

12. That s. 17 be amended (a) to transfer the responsibility for providing access to public disclosure statements from the Clerk of the Legislative Assembly to the Office of the Ethics Commissioner and (b) to require that the statements be made available to the public through the website of the Office of the Ethics Commissioner as well as in person.

13. That s. 19 be amended to specify that the Office of the Ethics Commissioner is responsible for reimbursing Members for the costs associated with completing disclosure statements and establishing and administering blind trusts.

Investigations into Breaches

14. That s. 25 be amended to include wording similar to that of s. 5(1) of the *Election Finances and Contributions Disclosure Act* with regard to the powers of the Ethics Commissioner when conducting investigations or inquiries.

15. That s. 27(1) be reviewed to determine why the requirements for the contents of investigation reports do not include findings with respect to former political staff members and former Ministers.

16. That s. 25(8) be amended to make it mandatory for the Ethics Commissioner to report his or her findings to the person against whom the allegation was made before reporting his or her findings to the Speaker.

17. That s. 29(1) be amended by replacing “substitute” with “make.”

Sanctions

18. That s. 27(2) be amended to enable the Ethics Commissioner to levy administrative fines of up to $500 for technical breaches of the Act arising from a failure to file a disclosure statement, an amending disclosure statement, or a return within the time provided by s. 11 or 15.

Confidentiality

19. That s. 26 be amended to allow the Ethics Commissioner to disclose publicly that a request for an investigation has been received and the identity of the individual who made the request and to further allow the Ethics Commissioner to release information publicly when it is necessary and in the public interest to (a) correct misinformation that is in the public realm concerning advice given to a Member or with respect to a request for an investigation or (b) in any other circumstance where the Ethics Commissioner is of the opinion that the public interest served by the release of such information significantly outweighs the need to maintain confidentiality in accordance with the Act.

20. That s. 26(2) be amended to allow the Ethics Commissioner to disclose any information about ongoing investigations to the Speaker.

21. That s. 26 be amended to expressly state that the confidentiality provisions in the Act prevail over the *Freedom of Information and Protection of Privacy Act*.

Time Limits

22. That the limitation periods in s. 25(12) for the commencement of an investigation or inquiry, in s. 31(6) for the prosecution of a former Minister for the breach of the cooling-off period provisions, and in s. 32.1(7) for the prosecution of a former political staff member for the breach of the cooling-off period provisions, be extended to five years.

23. That s. 47(2) be amended to extend the retention period for records in the custody and control of the Office of the Ethics Commissioner to five years.

Senior Officials

24. That the obligations and restrictions in the Fowler memo as they apply to Deputy Ministers and senior officials be incorporated into the Act.

25. That the cooling-off provisions applicable to the senior officials currently covered by the *Alberta Public Service Post-Employment Restriction Regulation* be incorporated into the Act.

Recommendations for No Change

26. That the definition of "private interest" not be changed.

27. That the concept of apparent conflict of interest not be incorporated into the Act.

28. That s. 2 not be amended to broaden the scope of private interests or the duties of Members.

29. That no changes be made to the provisions in s. 2 that prohibit Members from participating in discussion or voting in meetings if it involves their private interest.

30. That the provisions that apply to adult and minor children of Members not be changed.

31. That no definition of the term "improperly" be included in the Act.

32. That no changes be made to the rules on blind trusts.

33. That s. 5 not be amended to incorporate the wording "constituency matters."

34. That the $400 limit on disclosure for gifts and benefits not be changed.

35. That the Ethics Commissioner retain the authority to provide an "exemption" for gifts and benefits received by Members.

36. That the provisions with respect to the receipt of gifts and other non-monetary benefits from charitable organizations, including the acceptance of tickets to charitable fundraising events, not be changed.

37. That the Act not be amended to distinguish between accepting a gift or benefit for personal gain and accepting it as a matter of social protocol.

38. That s. 7 not be amended to address the exchange of gifts between friends.

39. That the uses of the terms "fees," "gifts," and "benefits" are appropriate in their respective contexts and do not need to be defined, nor should s. 7 be amended to specifically reference accommodations and hospitality.

40. That no changes be made to the provisions on the Minister of Finance's report under s. 16 with regard to payments made to Members and their direct associates under programs to which Members pay premiums to the Crown (e.g., farm insurance programs).

41. That the Act not be amended to allow the Ethics Commissioner to initiate investigations of his or her own accord.

42. That s. 27(2) not be amended to enable the Ethics Commissioner to impose sanctions on Members for breaches of the Act, apart from the administrative fine scheme in Recommendation 18.

43. That s. 25 not be amended to empower the Ethics Commissioner to apply sanctions to Members for failing to cooperate with the Ethics Commissioner.

44. That the definition of “significant official dealings” in s. 31 not be changed.

2.0 COMMITTEE MANDATE

On October 23, 2012, the Legislative Assembly passed Government Motion 13, which established the Select Special Conflicts of Interest Act Review Committee, an all-party committee made up of 11 Alberta MLAs, for the purpose of undertaking a comprehensive review of the *Conflicts of Interest Act* pursuant to s. 48 of the Act:

> By December 1, 2012 and every 5 years after that, a special committee established by the Legislative Assembly must begin a comprehensive review of this Act and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

The Committee began its review on November 27, 2012.

3.0 INTRODUCTION

The *Conflicts of Interest Act*, RSA 2000, c. C-23, governs the ethical conduct of Members of the Legislative Assembly, current and former Ministers, and former political staff members.

The Act was given Royal Assent in 1991 and was fully in force by spring 1993. In 1995 a review panel chaired by Professor Allan Tupper was established and given the mandate to review the suitability and effectiveness of the Act. The panel's report, Integrity in Government in Alberta: Towards the Twenty First Century, often referred to as the Tupper report, was released in January 1996 and made a number of recommendations for amendments. The Act was amended in 1998 in response to these recommendations, one of which was the requirement that a special committee of the Legislative Assembly review the Act every five years and report any recommendations to the Assembly within one year of commencing its review. This mandatory periodic review was described in the Tupper report as a means of ensuring the Act's continued relevance and applicability "in light of changing public expectations, alterations to the role of government, and changes in the responsibilities of Members."

The first committee for this five-year review was created in 2005 and reported to the Legislative Assembly in May 2006. A number of the recommendations that arose through this review process were ultimately incorporated into the Act when it was amended in 2007.

This report is the result of the second five-year review, which started in November 2012. It contains the 44 recommendations that the Committee agreed to during its deliberations, including recommendations for amendments and recommendations for which the Committee felt that no changes to the Act were necessary. For a complete record of the Committee's deliberations, please consult the transcripts of the Committee's meetings in *Hansard*.

4.0 ACKNOWLEDGEMENTS

The Committee wishes to acknowledge the useful contributions of the individuals and organizations who provided written submissions and/or appeared before the Committee.

The Committee also wishes to acknowledge the valuable assistance of the technical support staff and Legislative Assembly Office support staff.

Technical Support Staff

Office of the Ethics Commissioner
Mr. Neil Wilkinson, Ethics Commissioner
Mr. Bradley Odsen, QC, General Counsel
Mr. Glen Resler, Chief Administrative Officer

Alberta Justice and Solicitor General
Ms Joan Neatby, Solicitor, Legislative Reform

Legislative Assembly Office Support Staff
Ms Leah Kirtio, House Services Administrative Assistant
Ms Sarah Leonard, Legal Research Officer
Mr. Duncan Leung, Committee Services Coordinator
Dr. Philip Massolin, Manager of Research Services
Ms Jody Rempel, Committee Clerk
Mr. Robert Reynolds, QC, Law Clerk and Director of Interparliamentary Relations
Ms Nancy Robert, Research Officer
Ms Rhonda Sorensen, Manager of Corporate Communications and Broadcast Services
Ms Nancy Zhang, Legislative Research Officer
Hansard staff
Security staff

5.0 CONSULTATION AND REVIEW PROCESS

The Committee's review of the *Conflicts of Interest Act* involved a series of meetings that were open to the public and streamed live on the Legislative Assembly website. These meetings took place on November 27 and December 11, 2012; January 28, February 25, May 7, June 19, August 27, September 3 and 13, and October 11 and 24, 2013.

The Committee invited written submissions from a number of identified stakeholders and advertised on its website and through social media for written submissions from the public. Stakeholders included Ethics Commissioners from other jurisdictions, advocacy groups and ethics associations, research institutes and academics, MLAs, and senior government officials.

As part of the submission process, a Discussion Guide was prepared in consultation with the Office of the Ethics Commissioner and Alberta Justice and Solicitor General and made available online for stakeholders and the public in January 2013. The Discussion Guide provided background on the Act and identified possible issues for discussion.

The Committee received 10 written submissions by the March 1, 2013, deadline. The author of one submission offered to appear before the Committee, and another individual offered to make an oral presentation without having made a written submission. On June 19, 2013, the Committee heard oral presentations from these two individuals. Appendices D and E contain a complete list of all the individuals and organizations that provided written submissions and oral presentations to the Committee.

The Committee then met a number of times to deliberate on the issues and suggestions arising from the written submissions and oral presentations, the Discussion Guide, and from Committee members themselves. Representatives from the Office of the Ethics Commissioner and Alberta Justice and Solicitor General attended meetings and supported the Committee by providing technical expertise. In particular, the Office of the Ethics Commissioner provided useful insight into the practical application of the Act.

This report is the result of the Committee's deliberations and contains its 44 recommendations in relation to the Act.

6.0 COMMITTEE RECOMMENDATIONS

6.1 Interpretation of the Act

Mandate and Scope of the Act

Currently, the *Conflicts of Interest Act* (the "Act") primarily addresses financial conflicts of interest. The submission from the Sheldon Chumir Foundation for Ethics in Leadership suggested that given the increased public expectation for greater transparency, accountability, and integrity in the conduct of public office holders, the Committee should consider expanding the mandate of the Act to include broader integrity and ethical concerns as well.

The Committee considered conflicts legislation from other Canadian jurisdictions with scopes reaching beyond purely pecuniary matters, particularly the statement of values and ethical principles in ss. 6-9 of the Quebec *Code of ethics and conduct of the Members of the National Assembly* and agreed that it would be desirable to broaden the scope of the Act to include general requirements for ethics and integrity. The Committee noted that although the Act contains a number of broad ethical principles in accordance with which Members are expected to conduct themselves, these principles are unenforceable because they are in the preamble rather than the body of the Act. The Committee agreed to recommend making the existing provisions on integrity and ethics enforceable by incorporating the third and fourth recitals of the preamble into the body of the Act:

> Members of the Legislative Assembly shall perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its members; and
>
> Members of the Legislative Assembly, in reconciling their duties of office and their private interests, shall act with integrity and impartiality.

The Committee also discussed the importance of requiring Members to act in accordance with the law and agreed that a requirement for Members to act "lawfully" or "in accordance with the law" should be incorporated into these provisions. However, the Committee recognized the importance of adequately circumscribing this requirement so that only serious or significant breaches of the law would result in sanction.

Therefore, the Committee recommends:

> **1. That the third and fourth recitals of the preamble be incorporated into the body of the Act itself, and that the concept of requiring Members to act "lawfully" or "in accordance with the law" also be included in the section.**

Definition of "Adult Interdependent Partner"

All restrictions and disclosure requirements in the Act that apply to a Member's spouse also apply to a Member's adult interdependent partner. Although the term "adult interdependent partner" is not defined in the Act, it is understood to have the definition given in s. 1(a) of the *Adult Interdependent Relationships Act*, SA 2002, c. A-4.5.

One submission suggested including a definition of the term in the Act, while another suggested that the term be incorporated within the definition of "spouse" in s. 1(1)(l) in order to eliminate the need to reference both terms throughout the Act.

The Committee concluded that since the law essentially treats adult interdependent partners as spouses, including the term within the definition of spouse was appropriate and would assist in simplifying and clarifying the language of the Act. The Committee therefore recommends:

> **2. That the term "adult interdependent partner" be included within the definition of "spouse" in s. 1(1)(l).**

6.2 Obligations of Members

Clarification of Fees, Gifts, and Benefits Provision

Section 7 restricts the acceptance by Members of certain fees, gifts, or benefits:

> (1) A Member breaches this Act if the Member or, to the knowledge of the Member, the Member's spouse or adult interdependent partner or minor child accepts from a person other than the Crown a fee, gift or other benefit that is connected directly or indirectly with the performance of the Member's office.
>
> (2) Subsection (1) does not apply to a fee, gift or other benefit that is accepted by the Member or the Member's spouse or adult interdependent partner or minor child as an incident of protocol or of the social obligations that normally accompany the responsibilities of the Member's office if
>
> (a) the total value of the fees, gifts and benefits given from the same source to the Member and the Member's spouse or adult interdependent partner and minor children in any calendar year is $400 or less …

The Ethics Commissioner indicated to the Committee that there is significant confusion among both Members and the public with regard to this provision. In particular, there is a perception that *any* fee, gift or benefit under $400 is acceptable even if it is directly or indirectly associated with the performance of the Member's office. The Committee agreed that this section would benefit from rewording to make it clear that (a) all fees, gifts, and benefits (even those under $400) are prohibited if they are connected in any way with the performance of the Member's office, and (b) that Members may accept fees, gifts, or benefits as a matter of protocol or social obligation but only if these fall under the $400 total yearly limit *or* the Ethics Commissioner has approved their acceptance. Therefore, the Committee recommends:

> **3. That s. 7 be reworded to clarify that the receipt of any fee, gift, or other benefit, regardless of dollar value, is prohibited if it is directly or indirectly associated with the performance of a Member's office.**

Gifts from Constituency Associations or Political Parties

Under s. 7(2.1), the restrictions on gifts and benefits do not apply to those that a Member receives from his or her political party or constituency association:

> Subsections (1) and (2) do not apply to a gift or other non-monetary benefit that is accepted by the Member or the Member's spouse or adult interdependent partner or minor child from the Member's political party or constituency association or from a charitable association.

The Ethics Commissioner recommended amending this subsection to make it clear that gifts or benefits from a Member's political party or constituency association must also be permitted under the *Election Finances and Contributions Disclosure Act*, RSA 2000, c. E-2, in order to ensure that any exemption for such gifts under the *Conflicts of Interest Act* would also be in compliance with the obligations of election financing legislation.

The Committee agreed with the Ethics Commissioner's suggestion and therefore recommends:

> **4. That s. 7(2.1) be amended to clarify that gifts or non-monetary benefits received from a political party or constituency association must also be permitted under the *Election Finances and Contributions Disclosure Act*.**

Non-Commercial Flights

Section 7.1 prohibits Members from accepting travel for any purpose on non-commercial chartered or private aircraft, excluding those owned, chartered, or leased by the Crown, unless two conditions are met:

> (a) the Member is travelling in his or her capacity as a Member of the Legislative Assembly, as a member of the Executive Council or as the holder of an office to which the Member is elected or appointed by the Legislative Assembly, and
> (b) the Member informs the Ethics Commissioner within 7 days after the travel is completed.

The submissions from Alberta Enterprise and Advanced Education and from the Ethics Commissioner both recommended amending the section to require Members to seek approval for such flights prior to travel, although both recognized that the provision allowing for subsequent disclosure to the Commissioner should be retained for cases where it was not possible or feasible for a Member to get approval beforehand. The Ethics Commissioner indicated in his submission that he currently advises Members that it is in their best interests to contact his office before accepting a non-commercial flight since if it is determined to be a breach of the Act afterwards, the Member might not be able to reimburse the cost of the flight due to Transport Canada regulations. The Committee noted that during the previous review of the Act, the 2006 Select Special Conflicts of Interest Act Review Committee had also recommended that Members be required to consult with the Ethics Commissioner prior to accepting such flights.

The Committee considered the issue and agreed that it was more appropriate and in keeping with the spirit of the legislation to require Members to seek permission from the Ethics Commissioner before the flight rather than simply allowing Members to disclose after the fact. However, the Committee recognized that in some circumstances it might be impossible or impractical to contact the Commissioner before the flight, and in such cases Members would still be required to disclose their travel after the flight occurred. Therefore, the Committee recommends:

> **5. That s. 7.1 be amended to require Members to request approval from the Ethics Commissioner, where practical, prior to the acceptance of a flight on a non-commercial aircraft. Under circumstances where it is not possible or practicable to contact the Ethics Commissioner to seek approval prior to taking the flight, the provision in s. 7(1)(3)(b) should be retained to allow the Member to provide subsequent timely disclosure to the Ethics Commissioner.**

Transfer of Accounts from ATB Financial

Subsection 8(1)(a) prohibits Members, their direct associates, and individuals directly associated with a Member's spouse or adult interdependent partner from entering into a contract to borrow money from a treasury branch. The Ethics Commissioner informed the Committee that in practice, Members are not required to transfer their pre-existing ATB Financial mortgages, lines of credit, or accounts to different financial institutions until, for instance, the mortgage comes up for renewal or the Member seeks an increase in the line of credit.

The Ethics Commissioner recommended that s. 19 be amended to entitle Members to be reimbursed for the reasonable and ordinary costs incurred in such transfers, as approved by the Ethics Commissioner. He further recommended that the Act be amended to explicitly give his office the authority to reimburse transfer costs and to require that the reimbursements be shown as a line item in the budget for the Office of the Ethics Commissioner, which is approved annually by the Standing Committee on Legislative Offices.

The Committee agreed that these costs should be reimbursed and that including them in the Ethics Commissioner's budget would streamline the reimbursement process and increase transparency. It therefore recommends:

> **6. That s.19 be amended to entitle Members to reimbursement for the cost of transferring a mortgage, line of credit, or other account from ATB Financial to another financial institution pursuant to s. 8(1)(a), that the authority to reimburse the transfer costs be given to the Office of the Ethics Commissioner and that such reimbursements be made through the budget of the Office of the Ethics Commissioner as a separate line item.**

6.3 Managing Investments and Businesses

Managed Funds and Blind Trusts

Under section 20, Ministers are subject to restrictions on holding publicly traded securities:

> (1) A Minister breaches this Act if the Minister, after the expiration of the relevant period referred to in section 22, owns or has a beneficial interest in publicly-traded securities.
>
> (2) Subsection (1) does not apply to publicly-traded securities held in the Minister's blind trust in accordance with this Act.
> …[14]

Section 23 extends these restrictions to the Leader of the Official Opposition.

A blind trust must meet all of the requirements in s. 1(7), which include the following:

- The trustee must be approved by the Ethics Commissioner after the Ethics Commissioner is satisfied that there is no relationship between the Member and the trustee that would affect or would appear to affect the discharge of the trustee's duties;
- The terms of the trust, in the opinion of the Ethics Commissioner, give the trustee sole power over investment decisions and preclude the Member from having any knowledge of the specific investments in the trust at any time after a deposit in the trust.

The Office of the Ethics Commissioner informed the Committee that the two key elements of a blind trust are (a) that the trustee has sole power over investment decisions, and (b) that the Member has no knowledge of the specific investments in the trust. However, it is possible to have investment arrangements that meet these essential criteria without being formal blind trusts. Such arrangements can include managed funds or managed portfolios, where publicly traded securities are in a Member's name, but the Member has no influence over specific investments and the fund manager has sole buying and selling discretion. By incorporating a hold-mail capacity into such an arrangement (i.e., the Member will not receive any mailings that would reveal information about the investments), the necessary criteria underlying the blind trust requirement are met but without the creation of a formal trust.

[14] Ministers may also apply to the Ethics Commissioner for approval to hold publicly traded securities pursuant to ss. 20(3), (4), and (5).

The Ethics Commissioner asked in his submission for flexibility with regard to s. 20 to approve such investment arrangements that are not formal blind trust agreements but which nevertheless have the necessary elements of a blind trust.

The Committee agreed that these proposed investment arrangements were appropriate mechanisms for addressing conflicts of interest with regard to publicly traded securities and therefore recommends:

> **7. That s. 20 be amended to give the Ethics Commissioner the ability to approve investment arrangements that include the necessary components of a blind trust without requiring a formal blind trust to be established.**

Management Trusts

Ministers are prohibited from carrying out certain activities pursuant to s. 21(1):

> A Minister breaches this Act if the Minister, after the expiration of the relevant period referred to in section 22,
>
> (a) engages in employment or in the practice of the profession,
> (b) carries on a business, or
> (c) holds an office or directorship other than in a social club, religious organization or political party.
>
> that creates or appears to create a conflict between a private interest of the Minister and the Minister's public duty.

However, the Ethics Commissioner can approve exceptions to this prohibition in certain circumstances under s. 21(2):

> A Minister may carry on an activity referred to in subsection (1) in a way approved by the Ethics Commissioner if
>
> (a) the Minister has disclosed the material facts to the Ethics Commissioner, and
> (b) the Ethics Commissioner is satisfied that the activity, if carried on in a way approved by the Ethics Commissioner, will not create or appear to create a conflict between a private interest of the Minister and the Minister's public duty.

Section 23 extends these prohibitions to the Leader of the Official Opposition.

Thus, the Ethics Commissioner may allow a Minister to carry on his or her business if certain conditions are met. In practice, a Minister will be permitted to hand over the day-to-day operations of the business to a management trustee who will run the business at arm's length from the Minister. However, since this arrangement is not a blind trust, the Minister retains a private interest in the business. This means that the Minister must still comply with the requirements of the Act with regard to that interest such as withdrawing from discussion and refraining from voting on related matters. Although section 21 does not explicitly state that management trusts are an acceptable arrangement by which a Minister can retain an interest in his or her business, the Ethics Commissioner indicated to the Committee that he interprets the Act as allowing them.

Alberta Enterprise and Advanced Education's submission recommended that Ministers be allowed to establish management trusts, although since these are not blind trusts, Ministers should be required to refrain from discussions or voting in meetings on matters that may affect the business's interest. The Ethics Commissioner indicated to the Committee that he supports this recommendation and that although he believes that the Act currently allows his office to approve such arrangements, he would like the Act to make it clear that they are permissible.

The Committee agreed that management trusts were an appropriate means of managing a Minister's private interest in his or her business and concluded that express wording permitting their use should be included in the Act. The Committee therefore recommends:

> **8. That s. 21 be amended to allow Ministers and the Leader of the Official Opposition to establish management trusts to carry on a business provided that they are not allowed to participate in discussions or vote in meetings on matters that could affect that business's interests.**

6.4 Disclosure

Filing Private Disclosure Statements

Section 11 of the Act requires Members to provide specific financial information to the Ethics Commissioner by filing disclosure statements. Under s. 11(1), Members must file these private disclosure statements in the form specified by the Ethics Commissioner. While these statements are currently filed in hard copy form, the Ethics Commissioner noted in his submission that his office wishes to move towards electronic filing in order to achieve administrative efficiencies in compiling the data required under the Act.

The Committee was informed that since the transition to electronic filing will take a few years, the Ethics Commissioner would like to start developing the system as soon as possible. However, he requires statutory authority to do so, and the Ethics Commissioner suggested that this could be accomplished by amending s. 11(1) to allow him to specify the manner in which such statements are to be filed. The Committee agreed with the Ethics Commissioner's suggestion and therefore recommends:

> **9. That s. 11(1) be amended to allow the Ethics Commissioner to prescribe the manner in which private disclosure statements can be filed so as to allow for the eventuality of filing such statements electronically.**

Withholding Information from Public Disclosure Statements

Under s. 14, the Ethics Commissioner prepares a public disclosure statement for each Member based on the information provided in the private disclosure statement filed pursuant to s. 11. Certain types of information are excluded from the public disclosure statement for a variety of reasons, including irrelevance, triviality, or the protection of privacy. In particular, s. 14(7) excludes two types of information related to certain individuals who have a relationship with the Member:

> The Ethics Commissioner may exclude from the public disclosure statement a source of income received by a Member's spouse or adult interdependent partner or minor child or a private corporation if
>
> (a) the income is or will be received in respect of services or things that are customarily provided on a confidential basis, or
>
> (b) the possibility of serious harm to a business of the spouse or adult interdependent partner, minor child or private corporation justifies a departure from the general principles of public disclosure.

The Wildrose submission recommended that if information has been withheld from a member's public disclosure statement because of the risk of serious harm pursuant to s. 14(7)(b), the statement should contain a note to that effect.

The Committee discussed the issue of transparency versus privacy and the extent to which Members' private information should be disclosed to the public. The Committee agreed that it was important for the public to know that this information had been provided to the Ethics Commissioner even if it was not to be disclosed and so concurred that a notation should be included on the disclosure statement.

The Committee then considered the nature of the notation. The Office of the Ethics Commissioner felt that any notation on a statement should be quite neutral in order to protect the underlying reason for withholding the information. The Committee agreed that the notation should not be overly specific and therefore recommends:

> **10. That the Act be amended such that if information is withheld from a Member's public disclosure statement under s. 14(7), the statement must include a notation indicating that information was withheld under that section.**

Filing Final Direct Associate Returns

Section 15 requires Members to provide a return to the Ethics Commissioner with the names and addresses of all persons with whom the Member is directly associated. Under s. 15(3), former Members must provide the Ethics Commissioner with a final direct associate return containing information about any new or terminated direct associates since the date of their last return within 30 days of leaving office.

The Ethics Commissioner recommended removing s. 15(3) from the Act. The Committee was informed that not only is the number of final direct associate returns received very low, the Ethics Commissioner cannot impose any sanctions for non-compliance on former Members. Currently, the Ethics Commissioner feels that the extent of his office's power in this regard is to send letters to all former Members asking whether any of their direct associate information changed since the date of their last return.

The Committee agreed that s. 15(3) was an ineffective and unnecessary provision and recommends:

> **11. That s. 15(3), which requires Members to file a final direct associate return after leaving office, be repealed.**

Availability of Public Disclosure Statements

The Office of the Ethics Commissioner is currently responsible for collecting private disclosure statements from Members, conducting disclosure meetings with Members and preparing public disclosure statements pursuant to ss. 11, 13, and 14. Under s. 17, the Ethics Commissioner files all completed public disclosure statements with the Clerk of the Legislative Assembly, who retains them and makes them available to anyone who wishes to see them.

The Ethics Commissioner recommended that since his office is already responsible for carrying out the majority of the work with regard to disclosure statements, the responsibility for making them publicly available should also lie with his office. Both the Ethics Commissioner and the Canadian Civil Liberties Association further recommended that public disclosure statements be made available online through the Ethics Commissioner's website in order to increase accessibility and transparency. The Ethics Commissioner noted that six Canadian jurisdictions currently provide online access to these statements and that the Commissioner in a seventh jurisdiction has made a similar recommendation.

The Ethics Commissioner initially brought these recommendations before the Standing Committee on Legislative Offices in January 2011; that committee suggested that these issues be considered by the Select Special Conflicts of Interest Act Review Committee for consideration as part of its review of the Act.

The Committee was informed that the Clerk's office had no objection to transferring responsibility for storage of and access to the statements to the Office of the Ethics Commissioner. The Committee felt that making public disclosure statements available online would increase transparency and accountability, and it therefore recommends:

12. That s. 17 be amended (a) to transfer the responsibility for providing access to public disclosure statements from the Clerk of the Legislative Assembly to the Office of the Ethics Commissioner and (b) to require that the statements be made available to the public through the website of the Office of the Ethics Commissioner as well as in person.

Authority to Reimburse Costs

Members are entitled to reimbursement for certain costs incurred in fulfilling their obligations under the Act:

> 19 (1) Members are entitled to be reimbursed for costs associated with the completion of their disclosure statements and the establishment and administration of their blind trusts.
>
> (2) The amount of the reimbursement is subject to the approval of the Ethics Commissioner.

The Ethics Commissioner's submission noted that s. 19 currently does not specify where the funds are budgeted to cover these costs. The Ethics Commissioner told the Committee that at present the funds come from a variety of different sources and the reimbursement process can be haphazard. He recommended that the Act be amended to explicitly give his office the authority to reimburse costs and to require that the reimbursements be shown as a line item in the budget for the Office of the Ethics Commissioner, which is approved annually by the Standing Committee on Legislative Offices. The Committee agreed that this would lead to greater simplicity and transparency in the reimbursement process and therefore recommends:

13. That s. 19 be amended to specify that the Office of the Ethics Commissioner is responsible for reimbursing Members for the costs associated with completing disclosure statements and establishing and administering blind trusts.

6.5 Investigations into Breaches

Powers of Investigation

Subsection 25(1) allows the Ethics Commissioner to conduct an investigation or an inquiry after receiving a request alleging a breach of the Act under s. 24 or where he or she has reason to believe that a Member, former Minister, or former political staff member has contravened advice or recommendations or other direction previously given by the Ethics Commissioner. The Act does not specify the difference between an investigation and an inquiry, but the Committee concluded that it was likely a difference of scale, with an inquiry being a much more extensive and serious process than an investigation.

When conducting an inquiry, s. 25(2) gives the Ethics Commissioner all the powers, privileges, and immunities of a commissioner under the *Public Inquiries Act*. This includes the power to summon witnesses and to compel the production of documents. When conducting an investigation, however, the only "power" given to the Commissioner is the requirement in s. 25(1.1) that a Member, former Minister, or former political staff member cooperate with the investigation.

The Ethics Commissioner informed the Committee that if an individual refuses to cooperate with an investigation, the Commissioner would effectively be forced to move to an inquiry so he could take advantage of the powers granted to him by s. 25(2) (i.e., all the powers of a commissioner under the *Public Inquiries Act*, which include the same powers as a civil court of record to enforce the attendance of witnesses and to compel them to give evidence or produce documents). The Ethics Commissioner

therefore asked the Committee to consider an amendment to s. 25 based on s. 5(1) of the *Election Finances and Contributions Disclosure Act*, similar to the following:

> For the purpose of carrying out an investigation or inquiry referred to in s. 25(1), the Ethics Commissioner has all the powers of a commissioner under the *Public Inquiries Act* as though the investigation or inquiry were an inquiry under that Act.

The Committee agreed that giving the Commissioner these powers would allow investigations to proceed more efficaciously without requiring the initiation of an inquiry and that such an amendment would provide clarity by straightforwardly defining the Ethics Commissioner's powers in relation to both investigations and inquiries. The Committee therefore recommends:

> **14. That s. 25 be amended to include wording similar to that of s. 5(1) of the *Election Finances and Contributions Disclosure Act* with regard to the powers of the Ethics Commissioner when conducting investigations or inquiries.**

Content of Investigation Reports

Subsection 25(7) requires the Ethics Commissioner to report his or her findings to the Speaker of the Legislative Assembly after completing an investigation pursuant to the following types of requests:

- A request by any person to investigate an alleged breach of the Act by a Member, former Minister, or former political staff member: s. 24(1);
- A request by a Member to investigate an alleged breach of the Act by the Member himself or herself: s. 24(3); or
- A request by the Legislative Assembly to investigate an alleged breach of the Act by a Member.[15]

Subsection 27(1) limits the content of the Ethics Commissioner's report to the Speaker to the following information:

> (a) the facts relating to the alleged breach found by the Ethics Commissioner, and
> (b) the Ethics Commissioner's findings as to whether the Member has breached this Act and, if so,
> (i) the nature of the breach, and
> (ii) the Ethics Commissioner's recommendation for the sanction, if any, that the Legislative Assembly may impose on the Member for the breach.

The Committee did not understand why s. 27(1) limits the Ethics Commissioner's reports to relating his findings on Members, not former political staff members or former Ministers, when s. 25(7) requires the Ethics Commissioner to provide reports to the Speaker on the results of these investigations as well. The Committee therefore recommends:

> **15. That s. 27(1) be reviewed to determine why the requirements for the contents of investigation reports do not include findings with respect to former political staff members and former Ministers.**

[15] The Ethics Commissioner is not required to report his findings to the Speaker if an investigation request has been made by Executive Council in respect of an alleged breach by a Minister: s. 24(5).

Reporting of Investigation Findings

Before the Ethics Commissioner provides his or her investigation findings to the Speaker, s. 25(8)(a) provides that the Commissioner *may* give a copy of the report to the individual against whom the allegation was made. The Committee raised the issue as to why this was optional rather than mandatory.

The Committee heard that it is the practice of the Office of the Ethics Commissioner to provide the individual in question with a draft report and allow that individual to respond, after which a final report is prepared and submitted to the Speaker. The Committee concluded that it would be beneficial to incorporate current practice into the Act and make it mandatory to provide the report to the individual against whom the allegation was made. It therefore recommends:

> **16. That s. 25(8) be amended to make it mandatory for the Ethics Commissioner to report his or her findings to the person against whom the allegation was made before reporting his or her findings to the Speaker.**

Powers of Legislative Assembly – Findings

Under s. 29(1), after the Speaker has received an investigation report from the Ethics Commissioner and laid it before the Assembly,

> The Legislative Assembly may accept or reject the findings of the Ethics Commissioner or substitute its own findings and may if it determines that there is a breach
> (a) impose the sanction recommended by the Ethics Commissioner or any other sanction referred to in section 27(2) it considers appropriate, or
> (b) impose no sanction.

The Integrity Commissioner of Nunavut argued that the Assembly's power to substitute its own findings for those of the Ethics Commissioner raised the problematic issue of determining what would constitute an appropriate basis on which the Assembly would substitute its own findings.

The Committee discussed the problems inherent in the concept of the Assembly "substituting" its own findings for those of the Ethics Commissioner, particularly when the Assembly had not conducted the investigation itself, and the circumstances under which it would be appropriate for it to do so. The Committee also considered whether, in the absence of the power to substitute findings, the Assembly could partially accept or reject the Ethics Commissioner's findings and what this would mean for its ability to impose sanctions in such a case.

The Committee ultimately objected to the term "substitute" in s. 29(1) because it suggested that the Assembly was replacing the Commissioner's findings with its own. Rather, the Committee agreed that the Assembly should have the authority to make its own separate findings but that these would not replace the original findings of the Ethics Commissioner. Therefore, the Committee recommends:

> **17. That s. 29(1) be amended by replacing "substitute" with "make."**

6.6 Sanctions

Administrative Fines

There are currently no provisions in the Act that would allow the Ethics Commissioner to levy administrative fines against Members for minor breaches of the Act.

The Ethics Commissioner recommended in his submission that s. 27(2), which lists the sanctions the Ethics Commissioner may recommend to the Assembly if he finds that a Member has breached the Act, be amended to give the Commissioner discretion to levy administrative fines of up to $500 for technical breaches of the Act such as late filing or failure to report. The submission from the Sheldon Chumir Foundation for Ethics in Leadership contained a similar recommendation, noting that such fines would encourage Members to comply with their obligations while letting the public know that such obligations are taken seriously.

The Ethics Commissioner informed the Committee that generally nearly half of all Members' disclosure statements are outstanding the day before the deadline. The power to impose fines would draw attention to this issue and encourage compliance in a timely manner. The federal Conflict of Interest and Ethics Commissioner, who is currently the only Commissioner in Canada with the ability to impose this type of fine, has indicated to the Ethics Commissioner that it is a very effective tool in ensuring compliance. The Committee agreed that such fines would be useful in ensuring that reporting obligations are met and therefore recommends:

> **18. That s. 27(2) be amended to enable the Ethics Commissioner to levy administrative fines of up to $500 for technical breaches of the Act arising from a failure to file a disclosure statement, an amending disclosure statement, or a return within the time provided by s. 11 or 15.**

6.7 Confidentiality

Public Disclosure of Information

Subsection 26(1) imposes a duty on the Ethics Commissioner and his or her staff (both current and former) to maintain the confidentiality of all information and allegations that come to their knowledge in the course of the administration of the Act. There are certain limited exceptions to the confidentiality requirement in s. 26(2):

> Allegations and information to which subsection (1) applies may be
> (a) disclosed to the Member, former Minister or former political staff member whose conduct is the subject of proceedings under this Part;
> (b) disclosed by a person conducting an investigation to the extent necessary to enable that person to obtain information from another person;
> (c) adduced in evidence at an inquiry under this Part;
> (d) disclosed in a report made by the Ethics Commissioner under this Part;
> (e) disclosed where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice and Attorney General or a law enforcement agency of an alleged offence under the Act or any other enactment of Alberta or an Act of the Parliament of Canada.

The Ethics Commissioner requested that the Act be amended to prevent Members from commenting publicly or issuing press releases on requests sent to the Commissioner until the Commissioner confirmed receipt. However, the Committee agreed that rather than imposing restrictions on Members, the better way to address the issue would be to allow the Commissioner to state publicly whether he had received an investigation request or not. The Committee concluded that s. 26 should be amended to

permit the Ethics Commissioner to comment publicly to acknowledge receipt of a request for investigation.

Section 26 also does not contain an exception that would allow the Office of the Ethics Commissioner to comment publicly on active investigations or to release his opinions or recommendations. The Ethics Commissioner recommended that his office be given the authority to disclose this information to the public in certain circumstances: (a) if a Member releases only part of an opinion or advice, the Ethics Commissioner should be permitted to release part or all of that opinion or advice, and (b) the Ethics Commissioner should be permitted to comment publicly to correct misinformation where doing so is in the public interest. The Committee agreed that the Ethics Commissioner ought to have a carefully circumscribed power to correct misleading information that had been released to the public.

The Committee therefore recommends:

> **19. That s. 26 be amended to allow the Ethics Commissioner to disclose publicly that a request for an investigation has been received and the identity of the individual who made the request and to further allow the Ethics Commissioner to release information publicly when it is necessary and in the public interest to (a) correct misinformation that is in the public realm concerning advice given to a Member or with respect to a request for an investigation or (b) in any other circumstance where the Ethics Commissioner is of the opinion that the public interest served by the release of such information significantly outweighs the need to maintain confidentiality in accordance with the Act.**

Disclosure of Information to Speaker

Under subsection 24(6),

> Where a matter has been referred to the Ethics Commissioner under subsection (1), (3) or (4) [requests for investigation], neither the Legislative Assembly nor a committee of the Assembly shall inquire into the matter.

The Ethics Commissioner asked the Committee to consider recommending an exception to the general confidentiality provision in s. 26 that would allow his office to disclose information about ongoing investigations to the Speaker for the purposes of enforcing compliance with s. 24(6). The absence of such an exception in the Act prevents the Ethics Commissioner from sharing this information with the Speaker. The Committee agreed that this was a necessary amendment to enable compliance with the Act by the Assembly and therefore recommends:

> **20. That s. 26(2) be amended to allow the Ethics Commissioner to disclose any information about ongoing investigations to the Speaker.**

Relationship to *Freedom of Information and Protection of Privacy Act*

The *Freedom of Information and Protection of Privacy Act*, RSA 2000, c. F-25 (FOIPP), specifically exempts the records of the Office of the Ethics Commissioner from its ambit (ss. 4(1)(d), (e), and (f) of FOIPP) in order to protect Members' information and to ensure that the Ethics Commissioner is able to provide Members with confidential advice. However, there is no reciprocal provision in the *Conflicts of Interest Act* to this effect.

The Ethics Commissioner recommended to the Committee that s. 26 be amended to expressly state that the Act's confidentiality provisions prevail over FOIPP. The Committee discussed the need for strong confidentiality provisions in this context and the benefit such a clause would provide by reducing uncertainty should this issue come before the courts in the future. The Committee felt that including such

a provision would ensure clarity and certainty with regard to the confidentiality of Members' personal information and therefore recommends:

> **21. That s. 26 be amended to expressly state that the confidentiality provisions in the Act prevail over the *Freedom of Information and Protection of Privacy Act*.**

6.8 Time Limits

Limitation Periods for Investigations, Inquiries, and Prosecutions

The Act currently contains the following time limits on commencing investigations, inquiries, and prosecutions:

- Investigations or inquiries shall not be commenced more than two years after the date on which the alleged breach occurred: s. 25(12);
- Prosecution of a Minister for contravention of s. 31 (the 12-month "cooling-off" period restrictions) shall not be commenced more than two years after the date on which the alleged breach occurred: s. 31(6); and
- Prosecution of a former political staff member for contravention of s. 32.1 (the six-month "cooling-off" period restrictions) shall not be commenced more than two years after the date on which the alleged offence occurred: s. 32.1(7).

The Alberta Enterprise and Advanced Education submission recommended that the Committee consider amending the existing two-year limitation period although the Ethics Commissioner indicated to the Committee that he felt the current limitation period was adequate.

The Committee examined the conflict of interest legislation in other Canadian jurisdictions and determined that most had either no limitation period or a limitation period longer than Alberta's two years. The Committee agreed that Alberta's two-year period was too short, especially given the fact that the clock starts running when the breach occurs, not when the Commissioner discovers or reasonably ought to have discovered the breach. The Committee felt that five years would be a more appropriate time limit, both for commencing investigations and inquiries and for prosecutions, and therefore the Committee recommends:

> **22. That the limitation periods in s. 25(12) for the commencement of an investigation or inquiry, in s. 31(6) for the prosecution of a former Minister for the breach of the cooling-off period provisions, and in s. 32.1(7) for the prosecution of a former political staff member for the breach of the cooling-off period provisions, be extended to five years.**

Record Retention Periods

Subsection 47(2) sets out the time periods for which the Ethics Commissioner must retain records that are in his or her custody or control. The Ethics Commissioner must keep Members' records for at least two years after the Member ceases to be a Member, Ministers' records for at least two years after the end of the Minister's 12-month cooling-off period, and former political staff members' records for at least two years after the end of the political staff member's six-month cooling off period.

The Committee noted that the length of time for which records are retained is directly related to the limitation period for commencing investigations, inquiries, or prosecutions that may require those records. In light of the Committee's recommendation that the limitation periods in the Act be extended to five years

(see “Limitation Periods for Investigations, Inquiries, and Prosecutions” above), the Committee recognized that the record retention period should be lengthened accordingly and therefore recommends:

> **23. That s. 47(2) be amended to extend the retention period for records in the custody and control of the Office of the Ethics Commissioner to five years.**

6.9 Senior Officials

Fowler Memo

In 1993, certain disclosure requirements and other restrictions in the Act were extended to Deputy Ministers and senior officials in modified form via a memorandum from then Minister of Justice and Attorney General Richard “Dick” Fowler (the “Fowler memo”). The term “senior officials” is not defined in the memo, although it is defined in the *Code of Conduct and Ethics for the Public Service of Alberta* as an individual appointed pursuant to OC 188/97, as amended, and the *Public Service Act*.[16] The Ethics Commissioner currently oversees the application of the Fowler memo to Deputy Ministers and senior officials, which includes ensuring compliance with disclosure requirements and the investigation of any alleged breaches.

The obligations in the memo are in addition to any restrictions imposed on public servants by the *Code of Conduct and Ethics for the Public Service of Alberta* and any other standard of conduct and ethics that might be applicable to particular individuals (e.g., departmental codes). In many cases, the obligations in the memo are similar to the provisions in the Act that apply to Members, although they are generally less onerous. For instance, financial disclosure is not made public, nor is there an absolute prohibition on owning publicly traded securities. The complete list of obligations in the Fowler memo is as follows:

- Senior officials must complete and file disclosure statements with the Ethics Commissioner with information on their assets, liabilities, and financial interests. Disclosure statements must also contain information on the assets, liabilities, and financial interests of the senior official’s spouse, minor children, and any private corporation controlled by any one or more of them. Most of the rules on form and content of disclosure statements in the Act apply to senior officials, with the exception that their financial disclosure is not made public.

- Senior officials are prohibited from owning publicly-traded securities if the business of the corporation that issues such securities could reasonably be materially affected by decisions made by the senior official in the course of carrying out his or her duties, unless such securities are held in a blind trust approved by the Ethics Commissioner.

- Senior officials are prohibited from taking part in decisions in the course of carrying out their duties where the senior official has reasonable grounds to believe that the decision might further a private interest of the senior official, the spouse or minor child of a senior official, or a private corporation controlled by any one or more of them.

- Senior officials are prohibited from using their office or powers to influence or to seek to influence decisions made or to be made by or on behalf of the Crown that might further a private interest of the senior official, the spouse or minor child of a senior official, or a private corporation controlled by any one or more of them.

- Senior officials are prohibited from using or communicating information not available to the general public that was gained by the senior official in the course of carrying out his or her office or powers to further a private interest of the senior official, the spouse or minor child of a senior official, or a private corporation controlled by any one or more of them.

[16] See Appendix F for a complete list of the individuals who are considered to be “senior officials.”

As a policy document, the memo does not have the force of law, and incorporation of these obligations into statute is necessary to make them enforceable. The submissions from the Ethics Commissioner and the Deputy Minister of Executive Council both recommended incorporating the provisions of the Fowler memo into legislation, and although it was suggested that the *Public Service Act* would be the most appropriate statute in which to do so, the Committee noted that many of the current obligations and restrictions on senior officials mirror the *Conflicts of Interest Act* and in the interests of consistency, it would be beneficial for both Ministers and their senior officials to be subject to the same piece of legislation. Therefore, the Committee recommends:

> **24. That the obligations and restrictions in the Fowler memo as they apply to Deputy Ministers and senior officials be incorporated into the Act.**

Cooling-off Period for Senior Officials

Certain senior officials are subject to a "cooling-off" period after their employment with the Government. Currently, these restrictions are set out in the *Alberta Public Service Post-Employment Restriction Regulation*.[17] Under s. 2 of the Regulation, the post-employment restrictions in the Regulation apply to Deputy Ministers, the positions listed in Salary Range D in Schedule 2 of OC 286/2013 (except the position of Chief of Staff, Office of the Premier),[18] and any other positions designated by the Minister. The Ethics Commissioner currently oversees the application and enforcement of the Regulation.

Pursuant to s. 3 of the Regulation, for six months after leaving one of the listed positions, an individual may not:

> (a) on behalf of himself or herself, solicit or accept
>
> (i) a contract or benefit from a department or a Provincial agency, or
>
> (ii) employment with a department or Provincial agency or appointment to a Provincial agency
>
> with which the former position holder had significant official dealings during his or her last year of service as a holder of that position,
>
> (b) on behalf of any other person, make representations with respect to
>
> (i) a contract or benefit from a department or a Provincial agency, or
>
> (ii) employment with a department or Provincial agency or appointment to a Provincial agency,
>
> (c) with respect to a person or entity other than a department or Provincial agency, accept employment with the person or entity, or an appointment to the board of directors or equivalent body of the entity, with which the former position holder had significant official dealings during his or her last year of service as a holder of that position, or
>
> (d) act on a commercial basis or make representations on his or her own behalf or on behalf of any other person in connection with any ongoing matter with respect to which the former position holder had significant official dealings during his or her last year of service as a holder of that position.

The post-employment restrictions in the Regulation are very similar to the cooling-off restrictions applicable to former Ministers and political staff members in the Act, save that (a) the length of the cooling-off period for Ministers is 12 months rather than six; and (b) the individuals governed by the Regulation are permitted to accept employment with any department or provincial agency in accordance with the *Public Service Act*.

[17] OC 94/2008, enacted pursuant to s. 23.1 of the *Public Service Act*.

[18] The positions in Schedule 2 of OC 286/2013 are: Alberta Representative in Asia, Alberta Representative in London, Alberta Representative in Ottawa, Alberta Representative in Washington DC, Chair of Alberta Utilities Commission, CEO of Alberta Gaming and Liquor Commission, CEO of Environmental Monitoring, Deputy Attorney General, and Public Service Commissioner.

The Committee discussed incorporating the post-employment restrictions contained in the Regulation into the Act and noted that this would improve consistency and transparency by having most of the conflict of interest obligations and requirements for senior officials in one location rather than spread out across multiple statutes, regulations, and policies. Since the Ethics Commissioner is also responsible for administering the Regulation, the Committee agreed that incorporating its provisions into the Act would create consistency without imposing an additional administrative burden on the Ethics Commissioner. The Committee therefore recommends:

> **25. That the cooling-off provisions applicable to the senior officials currently covered by the *Alberta Public Service Post-Employment Restriction Regulation* be incorporated into the Act.**

6.10 Recommendations for No Change

The Committee also considered the following issues but ultimately decided that no changes to the Act were necessary.

Definition of "Private Interest"

"Private interest" is negatively defined in section 1(1)(g). That is, a private interest does *not* include the following:

(i) an interest in a matter
  (A) that is of general application,
  (B) that affects a person as one of a broad class of the public, or
  (C) that concerns the remuneration and benefits of a Member;
(ii) an interest that is trivial,
(iii) an interest of a Member relating to publicly-traded securities in the Member's blind trust.

Although a few submissions recommended expanding the definition of the term, the Ethics Commissioner argued that the definition was appropriate and consistent with definitions in other jurisdictions across Canada and that it therefore need not be changed. The submission from the Sheldon Chumir Foundation for Ethics in Leadership made a recommendation along similar lines.

The Committee accepted the Ethics Commissioner's position on this matter, noting that the definition seems to be working well in its current form and that as the body administering the Act, the Office of the Ethics Commissioner is in the best position to make this assessment. The Committee therefore recommends:

> **26. That the definition of "private interest" not be changed.**

Apparent Conflict of Interest

The concept of "apparent" conflict of interest is not currently included in the Act. British Columbia is the only Canadian jurisdiction to have incorporated it into their legislation, where it is defined as "a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest": s. 2 of the *Members' Conflict of Interest Act*, RSBC 1996, c. 287. A Member is prohibited from exercising official powers or performing official duties if he or she has a real or apparent conflict of interest.

The Committee received submissions both in support of and against the inclusion in the Act of apparent conflicts of interest. In recommending that it not be included, the Ethics Commissioner's submission noted

that there is a highly subjective element to the concept that makes it difficult to apply, that it could increase vexatious or frivolous complaints, and that there is a risk of unwarranted damage to a Member's reputation that exceeds any potential benefit that might be achieved by introducing such an amendment. The submission from Alberta Enterprise and Advanced Education also raised the issue of the difficulty of determining an appropriate sanction for an apparent conflict of interest. Similar issues were raised by the presenter from the Sheldon Chumir Foundation for Ethics in Leadership.

The Committee agreed that apparent conflict of interest is a highly subjective concept that is very vague, prone to misinterpretation, and difficult to implement. It therefore recommends:

> **27. That the concept of apparent conflict of interest not be incorporated into the Act.**

Expanding the Scope of Private Interests and Conflicts of Interest

The presentation by the Centre for Professional and Applied Ethics at the University of Manitoba made two broad recommendations related to expanding the scope of private interests and broadening the duties of Members. The first suggestion was to amend s. 2 of the Act to identify a duty to exercise good judgment, to expand familial private interests, and to include other factors that could reasonably be perceived as having a biasing influence. The second recommendation was that s. 2 be amended to incorporate wording similar to that in s. 16 of the Quebec *Code of ethics and conduct of the Members of the National Assembly*, which prohibits a Member from acting, attempting to act or refraining from acting so as to further his or her private interests or those of a family member or non-dependent child, or to improperly further another person's private interests. The Committee concluded, however, that the current provisions in the Act are appropriate and therefore recommends

> **28. That s. 2 not be amended to broaden the scope of private interests or the duties of Members.**

Participating and Voting in Meetings

Section 2 prohibits Members from taking part in decisions that may further the private interests of the Member, the Member's direct associates, or the Member's minor or adult child. Subsection 2(2) goes into further detail on restrictions on participating and voting when such matters arise in meetings:

> Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor or adult child or a person directly associated with the Member has a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by a resolution of the Legislative Assembly, the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

The submission from Alberta Enterprise and Advanced Education recommended that the prohibition on participating and voting currently in the Act be retained because of the potential for a Member with a private interest to influence the decision-making of other Members, particularly if that Member is seen as having expertise in the area. The benefits of the Member's expertise or experience are outweighed by the potential for personal gain and apprehension of bias. The Committee agreed and therefore recommends:

> **29. That no changes be made to the provisions in s. 2 that prohibit Members from participating in discussion or voting in meetings if it involves their private interest.**

Adult and Minor Children

Section 2 is the only provision in the Act that extends to a Member's adult children in addition to minor children; it prohibits Members from taking part in decisions that may further the private interest of, *inter alia*, the Member's adult or minor children. Sections 3, 7, 12, and 14 refer only to minor children.

The Ethics Commissioner indicated to the Committee that he believes the terms minor and adult children are used appropriately in each section and did not recommend any changes in the use of either term. The Ethics Commissioner also noted that ss. 3 and 4 refer to improperly furthering the private interest of another person, which would include both adult and minor children in any case. The Committee did not see any need for change and therefore recommends:

> **30. That the provisions that apply to adult and minor children of Members not be changed.**

Definition of "Improperly"

Section 3 of the Act prohibits Members from using their influence to further private interests:

> A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child or to **improperly** further another person's private interest. [emphasis added]

The term "improperly" is not defined in the Act. It was brought to the Committee's attention that although a number of other jurisdictions across Canada use "improperly" or "improper" in their conflicts of interest legislation, none define the term in their Act. The Committee was also informed that the few Commissioners' decisions in other jurisdictions that have considered the meaning of the term have concluded that it ought to be given its ordinary dictionary meaning in the context of the statute as a whole.

The Ethics Commissioner informed the Committee that including a definition of "improper" in the Act could potentially catch actions that are not meant to be caught by the Act and emphasized the need for flexibility in the application of this section since it is impossible to foresee all the circumstances that might involve improperly furthering another person's interests.

The Committee discussed the possible dangers of leaving such an important term undefined, the difficulty of adequately defining the term, and the potential restrictions that an overly narrow or overly broad definition might have on the Ethics Commissioner's ability to exercise his judgment. Therefore, the Committee recommends:

> **31. That no definition of the term "improperly" be included in the Act.**

Blind Trusts

Under s. 20, Ministers and the Leader of the Official Opposition may not own or have a beneficial interest in publicly traded securities unless they are held in a blind trust that meets the requirements set out in the Act (see section entitled "Managed Funds and Blind Trusts"). Section 1(7) lists the necessary criteria for a blind trust:

> (a) a Member is the settlor of the trust;
> (b) the trustee is approved as trustee by the Ethics Commissioner after the Ethics Commissioner is satisfied that there is no relationship between the Member and the trustee that would affect or would appear to affect the discharge of the trustee's duties;
> (c) the terms of the trust, in the opinion of the Ethics Commissioner,
>
> (i) give the trustee sole power over investment decisions,
> (ii) preclude the Member from having any knowledge of the specific investments in the trust at any time after a deposit in the trust,
> (iii) require that the Member may deposit in the trust only securities verified by the Ethics Commissioner as being publicly-traded securities, shares or units in a mutual fund, futures and forward contracts or exchange contracts, and
> (iv) require the trustee to invest only in publicly-traded securities, in shares or units in a mutual fund, in futures and forward contracts, in exchange contracts or in certificates of deposit, deposit receipts or other evidence of indebtedness given by a bank, trust company, credit union or treasury branch in consideration of a deposit made with the bank, trust company, credit union or treasury branch.

In his submission, the Ethics Commissioner did not recommend any changes to the rules for blind trusts.[19] Likewise, the Committee agreed that the current rules were appropriate and recommends:

32. That no changes be made to the rules on blind trusts.

Constituency Matters

Despite the various prohibitions in the Act on furthering private interests by using one's influence, taking part in decisions, or using insider information, section 5 expressly states that "a Member does not breach this Act if the activity is one in which Members of the Legislative Assembly normally engage." This provision is included in recognition of the fact that part of a Member's role is to advocate for or further the interests of his or her constituents, and the Act does not seek to prohibit activities in which Members legitimately engage on behalf of their constituents.

The Integrity Commissioner of Nunavut suggested that the wording of s. 5 was overly broad and vague and as such could unintentionally provide a defence to a Member accused of breaching the Act. Furthermore, the wording in the heading, "constituency matters," is not anywhere in the section itself, so the submission recommended incorporating this phrase into the wording of s. 5 for increased clarity. However, the Committee agreed that the wording of s. 5 was appropriate and sufficiently clear and therefore recommends:

33. That s. 5 not be amended to incorporate the wording "constituency matters."

[19] Note, however, that on the recommendation of the Ethics Commissioner, the Committee is recommending flexibility in the interpretation of the term "blind trust" to allow Ministers to use certain investment vehicles that meet the necessary criteria without being formal blind trusts. See above under "Managed Funds and Blind Trusts."

Disclosure Limit for Gifts and Benefits

Subsection 7(2) allows Members to accept fees, gifts, or other benefits as an incident of protocol or of the social obligations of office if the total value of fees, gifts, or benefits from that same source in any calendar year is $400 or less (see above under “Clarification of Fees, Gifts, and Benefits Provision”) or if:

> (b) the Member applies to the Ethics Commissioner
>
> (i) as soon as practicable after the fee, gift or benefit is received by the Member, or
>
> (ii) as soon as practicable after the Member has knowledge that the fee, gift or benefit has been accepted by the Member’s spouse or adult interdependent partner or minor child,
>
> and either obtains the Ethics Commissioner’s approval for its retention, on any conditions the Ethics Commissioner prescribes, or, if the approval is refused, takes any steps that the Ethics Commissioner directs with respect to the disposition of the fee, gift or benefit.

Essentially, this means that any fee, gift, or benefit that could potentially be accepted as an incident of protocol or social obligation must be disclosed to the Ethics Commissioner if it exceeds the $400 yearly limit. The Ethics Commissioner can then, in effect, grant an exemption to the Member by giving him or her approval to retain the gift.

The Ethics Commissioner noted in his submission that the last review of the Act resulted in an increase in the limit from $200 to $400, and that across the country, the limit varies from $150 to $500 (seven of these jurisdictions set their limit at $400 or higher). The Ethics Commissioner felt that the current $400 limit is appropriate. The Committee agreed and recommends:

> **34. That the $400 limit on disclosure for gifts and benefits not be changed.**

Exemption for Gifts and Benefits

The Ethics Commissioner’s authority to grant an “exemption” to Members to retain fees, gifts, and benefits over the $400 yearly limit pursuant to s. 7(2)(b) (see discussion above) is subject to one stipulation, as set out in subsection 7(2.1):

> The Ethics Commissioner may give an approval under subsection (2)(b) only where the Ethics Commissioner is satisfied that there is no reasonable possibility that retention of the fee, gift or other benefit will create a conflict between a private interest and the public duty of the Member.

In response to the Discussion Guide question on whether the Ethics Commissioner should retain the authority to grant this exemption, the Commissioner explained that the provision is useful since it gives the Ethics Commissioner discretion to direct the Member to take the appropriate steps (retention or disposal) with regard to any gift over the $400 limit. The Committee agreed with the Ethics Commissioner and therefore recommends:

> **35. That the Ethics Commissioner retain the authority to provide an “exemption” for gifts and benefits received by Members.**

Gifts and Other Non-Monetary Benefits from Charitable Organizations

Under subsection 7(2.1),

> Subsections (1) and (2) do not apply to a gift or other non-monetary benefit that is accepted by the Member or the Member's spouse or adult interdependent partner or minor child from … a charitable organization.

The Ethics Commissioner indicated to the Committee that he believes this provision is appropriate since charitable organizations serve the public interest. The Committee was informed that the most common issue that arises with regard to this subsection involves Members asking whether it is appropriate to attend a fundraiser or charitable event where the ticket is provided. The Ethics Commissioner has a screening mechanism for such requests whereby he ensures that tickets to charitable functions are provided directly by the charitable organization itself and that the organization is a registered charity with the Canada Revenue Agency. A Member would not be permitted to accept tickets to a charitable function that are provided by, for instance, a private corporation unrelated to the charity.

The Committee discussed the purposes underlying invitations to charitable functions and contrasted invitations for informational purposes to those seeking access to a particular Member. After contemplating the difficulty of framing a prohibition based on this distinction in the Act, the Committee accepted the Ethics Commissioner's existing screening mechanism as a suitable means of ensuring that only appropriate tickets are accepted by Members and therefore recommends:

> **36. That the provisions with respect to the receipt of gifts and other non-monetary benefits from charitable organizations, including the acceptance of tickets to charitable fundraising events, not be changed.**

Gifts – Personal Gain Versus Social Protocol

The Discussion Guide asked whether the Act should distinguish between accepting a gift or benefit for personal gain versus accepting it for social protocol. The submission from the Ethics Commissioner indicated that this differentiation was necessary in order to avoid situations where influence was obtained by giving gifts but that s. 7 already adequately makes the distinction. The Committee agreed and therefore recommends:

> **37. That the Act not be amended to distinguish between accepting a gift or benefit for personal gain and accepting it as a matter of social protocol.**

Exchange of Gifts between Friends

A Member raised the issue of whether s. 7 should address the normal exchange of gifts between friends, including defining category of "friend" and specifying when it is appropriate to accept a gift from such individuals. The Committee did not consider this necessary and therefore recommends:

> **38. That s. 7 not be amended to address the exchange of gifts between friends.**

Definition of Fees, Gifts, and Benefits

Section 7 imposes restrictions on the acceptance of fees, gifts, and benefits, but does not define any of these terms. The Discussion Guide asked whether the use of the terms "fees," "gifts," "benefits," or "other non-monetary benefits" was appropriate and whether the terms should be defined.

The Ethics Commissioner did not consider a definition of the terms to be necessary. He provided the Committee with the list of fees, gifts, and benefits that his office will consider approving for Members: travel and registration fees sponsored by other levels of government and conference organizers; fundraising events; tickets to concerts, theatre, or sporting events; and food, lodging, or transportation.

The submission from the Integrity Commissioner of Nunavut asked whether the intention of this section was to limit the accommodation or hospitality that Members could accept, and if so, whether it was clear that this was an "other benefit." The submission pointed out that the words "accommodation and hospitality" were not used in s. 7 and suggested the incorporation of wording to make it clear that they were included in the category of "other benefit."

The Committee felt that the use of the terms was appropriate and that they did not need to be defined in the Act, nor should accommodation or hospitality be specifically included in the provision. It therefore recommends:

> **39. That the uses of the terms "fees," "gifts," and "benefits" are appropriate in their respective contexts and do not need to be defined, nor should s.7 be amended to specifically reference accommodations and hospitality.**

Minister of Finance's Report – Certain Payments to Members

At the end of each fiscal year the Minister of Finance must prepare a report that includes information on payments made by the Crown to each Member and his or her direct associates: s. 16(1)(b).

The Ethics Commissioner noted in his submission that Members have expressed concern about including in this report payments to Members and their direct associates under certain programs where premiums are paid to the Crown, such as farm insurance programs. The Ethics Commissioner suggested that in light of these objections, the Committee might wish to consider whether perhaps these types of payments should be excluded from the Minister's report altogether.

The Committee heard that some Members have seen it as unfair that they are required to disclose payments received as damages for the loss of their crops, whereas a Member receiving a payment from, for example, car insurance after an accident would not. The Committee discussed the issue and noted that the disclosure requirement for farm insurance payouts exists because there is a public crop insurance system that pays out public money, in contrast to the private car insurance system. The Committee agreed that since these payments are made by the Crown to Members, it was advisable to require public disclosure so that the source and purpose of such payments would be clear to the public and also because it would give an idea of where Members' interests lie, which is the essence of the disclosure requirements in the Act. Therefore, the Committee recommends:

> **40. That no changes be made to the provisions on the Minister of Finance's report under s. 16 with regard to payments made to Members and their direct associates under programs to which Members pay premiums to the Crown (e.g., farm insurance programs).**

Ethics Commissioner's Ability to Initiate Investigations

Currently, the Ethics Commissioner cannot initiate investigations on his own initiative. Rather, s. 25(1) specifies that the Commissioner must receive a request for investigation under s. 24 or must have reason to believe that a Member, former Minister, or former political staff member has contravened instructions or advice previously given by the Ethics Commissioner.

A number of submissions recommended that the Ethics Commissioner be given the power to undertake investigations on his own initiative rather than requiring him to wait for a request. The Ethics

Commissioner, however, did not support such an amendment. He noted that in jurisdictions such as Alberta that allow members of the public to submit investigation requests to the Ethics Commissioner, there is no need to give the Commissioner the power to initiate his own investigations because matters are usually brought to his attention in this fashion. The Ethics Commissioner also argued that it might blur the line between his advisory and investigative functions, which could hinder his ability to interact with Members candidly and openly for the purpose of giving advice since Members might fear that any information disclosed to the Commissioner for those purposes could then be used to initiate an investigation.

The Ethics Commissioner also pointed out that he interprets the Act as allowing him to initiate investigations in certain circumstances that are adequate and appropriate for fulfilling his mandate. In addition to s. 25(1), s. 25(5) allows the Commissioner to re-investigate an alleged breach if new facts arise, and s. 42 allows the Ethics Commissioner to personally engage Members about their obligations under the Act without receiving a complaint, which could then lead the Commissioner to give the Member formal advice or recommendations under s. 43. If the Member failed to comply with that advice, the Ethics Commissioner could then initiate an investigation pursuant to s. 25(1).

The Committee agreed that the Ethics Commissioner currently has the appropriate ability to initiate investigations in certain circumstances, and that it was not necessary to give him a broad and uncircumscribed power to self-initiate investigations. Therefore, the Committee recommends:

> **41. That the Act not be amended to allow the Ethics Commissioner to initiate investigations of his or her own accord.**

Sanctions

If the Ethics Commissioner finds that a Member has breached the Act, he or she may recommend any one of the sanctions in s. 27(2):

> (a) that the Member be reprimanded;
> (b) that a penalty be imposed on the Member in an amount recommended by the Ethics Commissioner;
> (c) that the Member's right to sit and vote in the Legislative Assembly be suspended for a stated period or until the fulfillment of a condition;
> (d) that the Member be expelled from membership of the Legislative Assembly …

However, these are merely recommendations to the Assembly, and under s. 29, the Assembly will determine whether to impose the recommended sanction, any other sanction in s. 27(2), or no sanction at all. The Committee considered whether the Ethics Commissioner should have the power to impose sanctions on Members found to be in breach of the Act.

Alberta Enterprise and Advanced Education's submission suggested that this power was unnecessary because the Assembly has sufficiently broad powers to respond to breaches of the Act by its Members. The Office of the Ethics Commissioner informed the Committee that the Ethics Commissioner should not be given such powers and noted that it is a matter of parliamentary privilege for the Assembly to discipline its own members. The Ethics Commissioner also questioned whether it was advisable or appropriate to delegate such a function to an Officer of the Legislature and was not aware of any case in Alberta or other Canadian jurisdictions where the Assembly had rejected a recommended sanction. The Committee also heard that there is no other jurisdiction in Canada where the Commissioner has the power to completely sanction a Member – the closest instance would be the federal Conflict of Interest and Ethics Commissioner's ability to impose administrative penalties for certain narrowly specified breaches of their Act.

The Committee agreed that it trusted the Assembly to make appropriate decisions with regard to the Ethics Commissioner's recommendations for sanction and it therefore recommends:

42. That s. 27(2) not be amended to enable the Ethics Commissioner to impose sanctions on Members for breaches of the Act, apart from the administrative fine scheme in Recommendation 18.

Failure to Cooperate with Commissioner

Subsection 25(1.1) requires Members, former Ministers, and former political staff members to cooperate with an investigation by the Ethics Commissioner. This is the only power the Ethics Commissioner has when conducting an investigation, and it was pointed out to the Committee that if an individual refused to cooperate with an investigation, the Commissioner would in all likelihood have to initiate an inquiry in order to avail himself of the powers granted to him by s. 25(2).

The Discussion Guide asked whether the Ethics Commissioner should be given the authority to sanction Members for failing to cooperate. Alberta Enterprise and Advanced Education's submission recommended against giving the Ethics Commissioner such power. The Committee noted that in light of its recommendation to extend the Commissioner's existing powers under inquiries to investigations as well (see "Powers of Investigation" above), it was unnecessary to amend this section. The Committee recommends:

43. That s. 25 not be amended to empower the Ethics Commissioner to apply sanctions to Members for failing to cooperate with the Ethics Commissioner.

Significant Official Dealings

Certain activities that are prohibited during the cooling-off period for former Ministers are restricted solely in relation to entities with which the Minister had significant official dealings during his or her last year of service as Minister: s. 31(1). During the 12 months after he or she ceases to be a member of Executive Council, a former Minister may not:

> (a) on behalf of himself or herself, solicit or accept a contract or benefit from a department of the public service or a Provincial agency with which the former Minister had significant official dealings during the former Minister's last year of service as a Minister,
> (a.1) …
> (b) accept employment with a person or entity, or appointment to the board of directors or equivalent body of an entity, with which the former Minister had significant official dealings during the former Minister's last year of service as a Minister, …

For the purposes of s. 31(1), a Minister had significant official dealings with a particular body if, while in office, he or she "was directly and substantively involved with the department, Provincial agency, person or entity in an important manner": s. 31(2). Alberta Enterprise and Advanced Education's submission described this definition as unclear and potentially leading to confusion and thus recommended incorporating the Ethics Commissioner's bulletin of January 1997, which provides guidance to Members on the factors that the Commissioner considers when assessing whether significant official dealings exist. The Ethics Commissioner, however, considered the current definition in the Act appropriate. The Committee agreed and recommends:

44. That the definition of "significant official dealings" in s. 31 not be changed.

APPENDICES

Appendix A: Minority Report – Jeff Wilson, MLA and Shayne Saskiw, MLA

All of the following recommendations were presented to the Committee for their consideration during the course of this review. These recommendations were not only introduced by opposition members of the Committee, but also by independent groups or experts. All of the recommendations were voted down by the Committee, often with little serious consideration given to the substance of the recommendation. As a result, it is our impression that the Committee findings were pre-determined with regards to many of the recommendations.

The recommendations are summarized below as part of our Minority Report.

(original signed by)

Jeff Wilson, MLA
Calgary-Shaw

(original signed by)

Shayne Saskiw, MLA
Lac La Biche-St Paul-Two Hills

Improper Influence

The term “improper” is not defined in the Act. Defining it would give some guidance for the Commissioner when an investigation is initiated under that Section. The definition for the term “improper” could also focus on the concept of reasonable decision-making. In other words, would a well-informed person, having access to all the pertinent details and having given the issue some thought, come to the conclusion that the decision-maker was biased in any way?

This definition is often central to an investigation and should be added to the Act.

Apparent Conflicts of Interest

The Committee should again recommend expanding Section 2 to include apparent conflicts of interest as previously recommended by the Tupper Report. One stated purpose of the *Conflicts of Interest Act* in the Preamble is to promote “public confidence and trust in the integrity of each Member” and “maintain ... the Assembly’s dignity...”

Acceptance of this overdue recommendation will enhance public confidence and trust, and generally strengthen the *Conflicts of Interest Act*.

Ability to initiate investigations

Section 24 of the Act gives power to various parties to request that the Commissioner investigate potential conflicts of interest. Section 25 allows the Ethics Commissioner to conduct an investigation if he or she is of the opinion that a Member has acted in contravention to his or her advice. The Commissioner cannot initiate an investigation on the basis of information that he or she has acquired.

This power should be added to this office, as recommended by several organizations. This would also match the ability to initiate an investigation under the *Conflicts of Interest Act* with that of the Lobbyist Registrar, whose office is subject to that of the Ethics Commissioner.

Exemption from the cooling-off period and extension of the cooling-off periods

The Ethics Commissioner should not be able to waive the cooling off period for former Ministers. In addition to this, the cooling-off period for former political staff members should be lengthened from six to 12 months and the cooling-off period for former Ministers should be lengthened from 12 to 24 months.

Ensure that all full-time, paid CEOs are subject to the Act

Some senior officials in Alberta are covered by the Conflicts of Interest Act, while others are not. Full-time, salaried CEOs or equivalents under the *Alberta Public Agency Governance Act* should be subject to the disclosure requirements of the *Conflicts of Interest Act*, with the exception of government of Alberta employees.

The prohibition against speaking about a subject under investigation

Section 24(6) of the Act prohibits members from speaking on any matter under investigation by the Ethics Commissioner either in the Legislature or in Committee. In addition to this, there is no time limit to mandate when an investigation must be completed, meaning that a matter can be under investigation for a lengthy amount of time and the members are wholly prohibited from speaking about it on record.

Note: all of the related motions can be found on record in Hansard August 27, 2013 to October 11, 2013, in the transcript of the Select Special Conflicts of Interest Act Review Committee at www.assembly.ab.ca.

Appendix B: Minority Report – Laurie Blakeman, MLA

Throughout the deliberations of the Select Conflicts of Interests Act Review Committee 2013, I have appreciated the effort and consideration to each of the proposals from all of the participants in this process, especially the Office of the Ethics Commissioner. The committee's final report summarized some of the debate on the recommendations put forward to the Legislative Assembly. I remain concerned with the short list of senior officials working for public agencies that directly and indirectly report to the government, given the weakness or lack of internal conflict of interest rules.

At the heart of this issue is how the government defines the phrase "senior officials." The committee considered a February 1993 memo written by then-Minister of Justice and Attorney General, Richard "Dick" Fowler, stipulating how disclosure and post-employment provisions of the *Conflicts of Interest Act* apply to deputy ministers and undefined "senior officials."

In summary, the document, known as the "Fowler memo" requested that deputy ministers and senior officials to:

- file disclosure statements with the Ethics Commissioner;
- hold certain investments in a blind trust;
- abstain from any decision-making that could further private interests;
- use their powers to further private interests; and
- not use information gained through their position to further the private interests of their spouses, children or companies.

The Fowler memo is reproduced in its entirety within Attachment 1. The memo's provisions are not enforceable because it has no legislative backing. Although the committee recommends adopting its provisions into the *Conflicts of Interest Act*, a motion to expand the definition of "senior officials" was defeated.

Currently, the government's definition for senior officials does not resemble anything found in a typical dictionary. Instead of defining the phrase at all, the government publishes a list of positions considered to be senior officials. This list is appended to Orders in Council, meaning that the provincial cabinet can add or remove positions from the list at their leisure. The most recent list, found in Schedule 2 of Order in Council 286/2013, was published on September 6, 2013.

Currently, out of the 172 agencies, boards and commissions that fall under the *Alberta Public Agencies Governance Act* (APAGA), only nine full-time board presidents and CEOs currently report to the Office of the Ethics Commissioner as senior officials *Under the Conflicts of Interest Act*. By recommending that the *Act* adopt the Fowler memo, this could expand to a total of 38 different positions, as found in both Schedule 2 of Order in Council 286/2013 and Appendix F of the Majority Report.

In reality, the *Conflicts of Interest Act* needs to include the full-time presidents and CEOs of public agencies that:

1. have a high risk for conflicts of interest;
2. have a large amount of coverage or application; and
3. handle a large amount of money.

Public agencies that should fall under the *Conflicts of Interest Act* using this criteria, but currently do not because of the government's restrictive list in Order in Council 286/2013, include:

- Agriculture Financial Services Corporation;
- Alberta Livestock and Meat;
- Alberta Electric System Operator;
- Alberta Energy Regulator;
- Alberta Petroleum Marketing Commission;
- the Balancing Pool;
- the Market Surveillance Administrator ;
- Alberta Health Services;
- The Workers' Compensation Board;
- Travel Alberta; and
- agencies of Treasury Board and Finance, including the Alberta Securities Commission, Alberta Pensions Services, Alberta Capital Finance Authority, Alberta Investment Management Corp. and ATB Financial.

The full-time board presidents and CEOs of these agencies are likely to have conflicts of interest because of their position and because of the world they move around in. Their organizations have broad influence or application and are playing with a lot of money. Therefore, their CEOs should be subject to the disclosure provisions of the *Conflicts of Interest Act*, and at minimum, to the senior officials' cooling-off period.

The full-time presidents and CEOs of agencies not considered senior officials need to rely on APAGA for rules handling conflicts of interest. Despite section 11 of APAGA requiring a code of conduct for agencies, boards and commissions, this code is not nearly as comprehensive as the *Conflicts of Interests Act*. Although elements of the *Conflicts of Interest Act* are captured in the codes of conduct for public agencies, consistency cannot be controlled for, and they are not as stringent. In addition, APAGA requires board members to determine their own conflict of interest guidelines, which is a conflict of interest in itself. Surely, it would be in the government's interest to support the most vigorous conflict of interest legislation possible for everyone.

The *Conflicts of Interest Act* is clearly more comprehensive than the codes of conduct abided by executives of the Alberta Energy Regulator and Alberta Treasury Branches, or the Alberta Health Services' Conflicts of Interest Bylaw. In the case for all three agencies, there are no rules or bylaws that allow for investigations into ethics breeches among executives. In contrast, Part 5 of the *Conflicts of Interest Act* governs when and how suspected breaches are reported to the Office of the Ethics Commissioner, as well as how investigations will be conducted.

In the case of the Alberta Treasury Branches' code of conduct for directors, there is no explicit prohibition on directors (or their immediate family members) being party to a contract where money is borrowed from a treasury branch, but this is the case for MLAs in section 8(1)(a) in the *Act*. In fact, the word "loan" is not used in Alberta Treasury Branches' code of conduct for directors.

With the Alberta Energy Regulator, the only two post-employment restrictions are non-disclosure of confidential information and to not personally retain any intellectual property rights related to their work. In contrast, Parts 6 and 6.1 of the *Conflicts of Interest Act* contain numerous post-employment restrictions for former ministers and political staff members, including a one-year cooling-off period from being in a position that interacts with government.

The Alberta Energy Regulator is a good example of what needs to be included in the *Conflicts of Interest Act* because it currently holds the regulations for the oil sands, including environmental regulations. It is worth noting that although the Alberta Energy Regulator's CEO does not fall under the *Conflicts of Interest Act*, members of the Alberta Utilities Commission do. This is ironic given the Alberta Energy Regulator's predecessor and the Alberta Utilities Commission used to be one entity known as the Alberta Energy and Utilities Board until 2008. Clearly, there was a conscious decision to have one agency's executives report as "senior officials" under the *Conflicts of Interest Act*, but not for the other.

Also concerning is that this committee did not adequately address entities called delegated administrative organizations, otherwise known as DAOs. They were created in the late 1990s, operate as separate legal entities, and are tasked to carry-out government business via memorandums of understanding. They have a separate revenue stream that is government-mandated, and have their existence established either under the *Corporations Act*, *Societies Act*, a ministerial regulation or specific act of the Legislature. Better-known examples of DAOs include the Beverage Containers Management Board and the Tire Recycling Management Association. Other examples include Horse Racing Alberta and the Alberta Conservation Association.

Although the Office of the Ethics Commissioner included some DAOs in their October 3, 2013 list of agencies that either do not fall under APAGA or do not have full-time CEOS or equivalents (pages three to eight), DAOs were not separated. In fact, the most recent list that singles-out DAOs can only be found from the 2001 *Review of Agencies, Boards and Commissions and Delegated Administrative Organizations* (available in the Legislature Library). Please find Attachment 2 for a list of known DAOs.

Little is known about the quality of DAOs' conflicts of interest rules. Unlike most public agencies, DAOs have no obligation to work with the Public Agencies Governance Secretariat if it is not stipulated in their memorandum of understanding with the Crown. Horse Racing Alberta is particularly concerning because of the amount of money the organization handles, thus increasing board members' risk of a conflict of interest. Yet, the phrase "conflict of interest"

cannot be found in the *Horse Racing Alberta Act*. On the Horse Racing Alberta website, the only reference to conflicts of interest is in the terms of reference for their Governance & Compensation Committee: recommending steps for board members' awareness of conflicts of interest and avoidance of apparent ones.

DAOs are outliers and have to be brought in under some overriding piece of legislation. Stipulating in a memorandum of understanding that a DAO needs to have a code of conduct regarding conflicts of interest is not good enough. Albertans contribute to their revenue stream, but regular oversight of DAOs is intermittent (or non-existent), vague and operates quite distant from regular government departments.

In addition, the Canadian Civil Liberties Association proposed that the committee consider the role of partisan interest in the *Conflicts of Interest Act*, as the use of one's status as an MLA to advance partisan interests will undermine the public's confidence in the Legislature. I strongly support this recommendation because after over 40 years in the seat of power, this government has created a culture of entitlement and self-promotion closely-tied to party or partisan activities. These activities include the employment of partisan staff such as press secretaries for ministers. They also include news releases on Government of Alberta corporate letterhead that either:

- attack opposition MLAs;
- state that the "government was elected to keep building Alberta, to live within its means and to fight to open new markets for Alberta's resources"; or
- reference promises made by Premier Alison Redford when running for the leadership of the Progressive Conservative Association of Alberta.

Instead, news releases of this nature should be written by the Progressive Conservative Association of Alberta under their own letterhead.

I was disappointed in the block voting of the committee's government members on this issue. The many examples of blurred lines between partisan and government decisions abound, from public cheque presentations in opposition constituencies to the use of "mypcmla.ca" as a title on websites to government MLAs divvying-up provincial lottery funds. This erodes public confidence in the impartiality of government members and the credibility of pluralist democracy. The list of defeated motions can be found in Attachment 3.

Respectfully submitted

(original signed by Laurie Blakeman, MLA, Edmonton-Centre)

Attachment 1: The Fowler Memo (1993)

FEB 04 1993

Alberta

MEMORANDUM

DEPARTMENT OF JUSTICE

Room 227, Bowker Building
9833 - 109 Street

FROM: R. S. (Dick) Fowler, Q.C.
Minister of Justice & Attorney General
320 Legislature Building

OUR FILE REFERENCE:

YOUR FILE REFERENCE:

TO: Deputy Ministers and Senior Officials

DATE: February 3, 1993

TELEPHONE: 427-2339

SUBJECT: **FINANCIAL DISCLOSURE AND CONFLICTS OF INTEREST**

Since 1975 all addressees of this memorandum (herein the Senior Officials) have been required, by the Premier's Guidelines, to make full disclosure of their land holdings and business interests.

In 1989 a panel chaired by Chief Judge Wachowich was commissioned by Order-in-Council to investigate and report on conflict of interest rules applicable to members of the Executive Council, the Legislative Assembly and senior public servants in Alberta. As a result of the recommendations contained in the Wachowich report the Conflicts of Interest Act (the "Act") was assented to, and those portions of the Act establishing the Office of the Ethics Commissioner were proclaimed in force, on June 25, 1991. The remaining portions of the Act will come into force on March 1, 1993.

Cabinet has decided that certain recommendations of the Wachowich report, relating to Senior Officials, should be implemented. This will involve a wider scope of financial disclosure and additional provisions, directed at preventing actual or perceived conflicts of interest, and will replace the Premier's Guidelines as they pertain to Senior Officials.

The system of financial disclosure to be implemented by this memorandum will be similar to that to which Ministers of the Crown and Members of the Legislative Assembly will become subject on the effective date of the Act and will also be in addition to the obligations now imposed upon all public servants by the Code of Conduct and Ethics (the "Code") or any other standard of conduct and ethics applicable to you. However, unlike Ministers and Members, the financial disclosure to be required of Senior Officials will not be made public.

Senior Officials will be required to complete and file with the Ethics Commissioner disclosure statements, in a form approved from time to time by the Ethics Commissioner, regarding their assets, liabilities and financial interests and, so far as known to the Senior Official, the assets, liabilities and financial interests of their spouse, each minor child and any private corporation controlled by any one or more of them.

Spouse includes a party to a relationship between a man and a woman who are living together on a bona fide domestic basis but does not include a spouse who is living apart from a Senior Official if the Senior Official and the spouse have separated pursuant to a written separation agreement or if their support obligations and family property have been dealt with by a court order.

It will not be necessary to disclose obligations being incurred for ordinary living expenses that will be discharged in the ordinary course of the Senior Official's affairs.

It will be necessary to include in the disclosure statements to be filed a statement of the income that the Senior Official and, so far as is known to the Senior Official any other person mentioned above, has received in the preceding 12 months or expects to receive in the next twelve months and, to the extent required by the Ethics Commissioner, the sources of such income.

A copy of the disclosure statement which has been approved by the Ethics Commissioner is attached for your information. Disclosure statements for each person included in the scope of this policy must be filed within 60 days of a date to be determined by the Ethics Commissioner, within 60 days after becoming a Senior Official, in each subsequent year at the time specified by the Ethics Commissioner and within 30 days of the occurrence of any material change to the information contained in a then current disclosure statement. Senior Officials will also be required to notify the Ethics Commissioner of any new or changed responsibilities. Copies of the form of disclosure statements to be completed and filed will be forwarded to you under separate cover by the Ethics Commissioner, who will also advise of the process to be followed.

Completed disclosure statements will be filed with, and reviewed by, the Ethics Commissioner. The Ethics Commissioner may also meet with any Senior Official and their spouse, if available, to ensure that adequate disclosure has been made and be available to offer advice to the Senior Official if requested to do so. Senior officials will be protected when acting in accordance with recommendations made by the Ethics Commissioner, after full disclosure of relevant facts.

The Ethics Commissioner will report any concerns that he might have concerning the disclosure statements or matters arising from them to both the Minister of Justice and Attorney General and the responsible Minister, if he is unable to resolve such concerns with the Senior Official involved.

In addition effective April 1, 1993 Senior Officials will be prohibited from:

(a) owning publicly traded securities (as that term is defined in the Act) if the business of the corporation that issues such securities could reasonably be materially affected by decisions made by the Senior Official in the course of carrying out their duties, unless such securities are held in a blind trust approved by the Ethics Commissioner;

(b) taking part in a decision in the course of carrying out the Senior Officials's duties where the Senior Official has reasonable grounds to believe that the decision might further a private interest of the Senior Official, the spouse or minor child of a Senior Official, or a private corporation controlled by any one or more of them;

(c) using their office or powers to influence or to seek to influence a decision made or to be made by or on behalf of the Crown that might further a private interest of the Senior Official, the spouse or minor child of a Senior Official, or a private corporation controlled by any one or more of them;

(d) using or communicating information not available to the general public that was gained by the Senior Official in the course of carrying out the Senior Official's office or powers to further a private interest of the Senior Official, the spouse or minor child of a Senior Official, or a private corporation controlled by any one or more of them

The prohibitions in subsection (b), (c) and (d) will apply without limiting the provisions of any applicable code of conduct and ethics that might also be applicable to the Senior Official.

For the purposes of the prohibition set out above a "private interest" will not include an interest in a matter (a) that is of general application, (b) that affects a person as one of a broad class of the public, (c) that affects the remuneration or benefits of a Senior Official, (d) that is trivial, or (e) an interest of a Senior Official relating to publicly-traded securities in the Senior Official's blind trust if made or instituted after one hundred and eighty (180) days of the date that such securities are placed in the blind trust. The terms and conditions, including the trustee, of blind trusts must be approved by the Ethics Commissioner.

The Ethics Commissioner may also investigate complaints received, after notifying the Senior Official, the responsible Minister and the Minister of Justice and Attorney General of the complaint. Recommendations arising from such investigations will be made to the responsible Minister.

In implementing these enhanced requirements I wish to point out that the Wachowich report specifically stated that the review panel did not see "..., any evidence of a conflict of interests crisis among elected or appointed officials in Alberta today". The review panel went on to state that "an adequate conflicts of interests system is necessary. Given responsible elected and appointed officials, and given a public which is conscious of the need for integrity in government, such a system can guard against abuses and maintain public confidence in the institutions of government." These new measures will continue the leadership role that Alberta has taken regarding this matter.

Yours truly,

R. S. (Dick) Fowler, Q.C.
Minister of Justice and
Attorney General

Enclosure

Attachment 2: List of Delegated Administrative Organizations as of April 2001

Department	Delegated Administrative Organization
Agriculture, Food & Rural Development (now Agriculture and Rural Development)	Livestock Identification Services, Ltd.
Environment (merged with SRD)	Alberta Used Oil Management Association
	Beverage Containers Management Board
Gaming (no longer exists)	Alberta Racing Corporation (now Horse Racing Alberta, responsible to Justice)
Government Services (now Service Alberta)	Alberta Motor Vehicle Industry Council
	Funeral Services Regulatory Board
Municipal Affairs	Alberta Boilers Safety Association
	Alberta Elevating Devices and Amusement Rides Safety Association
	Alberta Propane Vehicle Administration Organization (dissolved in 2004)
	Petroleum Tank Management Association of Alberta
Sustainable Resource Development (merged with Environment)	Alberta Conservation Association
	Forest Resource Improvement Association of Alberta
	Professional Outfitters Association of Alberta

Source: *Review of Agencies, Boards and Commissions and Delegated Administrative Organizations: Final Report, April 30, 2001*, pages 31 and 32.

Attachment 3: List of Defeated Motions

August 27, 2013

- **MOVED by** Ms Notley that the Select Special Conflicts of Interest Act Review Committee recommend that the *Conflicts of Interest Act* be amended to require public disclosure of Member recusal from meetings as a result of a private interest.

September 13, 2013

- **MOVED by** Mr. Wilson that the Select Special Conflicts of Interest Act Review Committee recommend that section 24(6) of the *Conflicts of Interest Act* be repealed.

  A recorded vote was requested.
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Fenske, Johnson, McDonald, Young

- **MOVED by** Mr. Wilson that the Select Special Conflicts of Interest Act Review Committee recommend that section 24(6) of the *Conflicts of Interest Act* be amended to read:
  Where a matter has been referred to the Ethics Commissioner under subsection (1), (3), or (4), a committee of the Assembly shall not inquire into the matter.

  A recorded vote was requested.
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Fenske, Johnson, McDonald, Young

- **MOVED by** Mr. Wilson that the Select Special Conflicts of Interest Act Review Committee recommend that section 25(7) of the *Conflicts of Interest Act* be amended to the effect:
  (a) Where the request is made under section 24(1), (3), or (4), the Ethics Commissioner shall report the Ethic's Commissioner's findings to the Speaker of the Legislative Assembly within 24 months of commencing an investigation or inquiry.
  (b) After 12 months the Ethics Commissioner shall be compelled to request that the Standing Committee on Legislative Offices convene, and they shall request the additional means in order to complete their investigation within the time frame of 24 months.

- **MOVED by** Mr. Wilson that the Select Special Conflicts of Interest Act Review Committee recommend that section 29(1)(a) of the *Conflicts of Interest Act* be amended to create an exception that would read "impose the sanction recommended by the Ethics Commissioner or any other sanction referred to in section 27(2) it considers appropriate with the exception of (d)".

- **MOVED by** Ms Notley that the Select Special Conflicts of Interest Act Review Committee recommend that the cooling-off period for ministers under the *Conflicts of Interest Act* be extended to 24 months.

  A recorded vote was requested.
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Fenske, Johnson, McDonald, Young

- **MOVED by** Mr. Dorward that the Select Special Conflicts of Interest Act Review Committee recommend that section 31(1) of the *Conflicts of Interest Act* be amended to clarify that the cooling-off period applies from the point in time when the former minister ceases to be employed at that ministry relevant to their perspective employment appointment rather than at the point at which they cease to be a member of Executive Council.

- **MOVED by** Ms Blakeman that the Select Special Conflicts of Interest Act Review Committee recommend that the powers granted to the Ethics Commissioner, under the *Conflicts of Interest Act*, to provide exemptions to the cooling-off period should be revoked.

  A recorded vote was requested.
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Fenske, Johnson, McDonald, Young

- **MOVED by** Mr. Saskiw that the Select Special Conflicts of Interest Act Review Committee recommend broadening the definition in the prohibition found in section 31(1) of the *Conflicts of Interest Act* to apply to dealings with all government departments.

- **MOVED by** Mr. Saskiw that the Select Special Conflicts of Interest Act Review Committee recommend that section 32.1 of the *Conflicts of Interest Act* be amended to lengthen the cooling-off period of former political staff from six months to 12 months.

- **MOVED by** Ms Notley that the Select Special Conflicts of Interest Act Review Committee recommend that the rules for senior officials found in public service regulations and the Fowler Memo, dated February 3, 1993, be applied to senior officials of organizations that are exempted from other parts of the *Conflicts of Interest Act* as per the *Financial Administration Act*.

- **MOVED by** Ms Notley that the Select Special Conflict of Interest Act Review Committee recommend that the definition of “directly associated with” be expanded.

- **MOVED by** Ms Blakeman that the Select Special Conflicts of Interest Act Review Committee recommend that Members be prohibited in promoting partisan interests in carrying out their duties as a Member and that caucus funds and taxpayer and lottery-generated funds not be used to advance a political party.

  A recorded vote was requested.
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Fenske, Johnson, McDonald, Young

October 11, 2013

- **MOVED by** Mr. Wilson that the Select Special Conflicts of Interest Act Review Committee recommend that corporate agencies with full-time salaried Chief Executive Officers, or equivalents, that can be found under the Alberta Public Agencies Governance Act (APAGA), but are not necessarily governed by APAGA, fall under the *Conflicts of Interest Act*, not including those Chief Executive Officers that are already government of Alberta employees.

  A recorded vote was requested.
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Johnson, Lemke, McDonald, Young

- **MOVED by** Ms Blakeman the Select Special Conflicts of Interest Act Review Committee direct support staff to examine the current definition of senior officer as it appears in the *Conflicts of Interest Act* and propose changes to legislation that would apply the standards found in the *Conflicts of Interest Act* to full-time salaried senior officers, or equivalents, who are governed by APAGA but not government employees.

  A recorded vote was requested.
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Johnson, Lemke, McDonald, Young

- **MOVED by** Ms Notley that the Select Special Conflicts of Interest Act Review Committee recommend that the *Conflicts of Interest Act* be amended to include a section which allows for a judicial review on a limited scope of appeal similar to what currently exists in the Canadian federal *Conflict of Interest Act*.

- **MOVED by** Ms Blakeman that the Select Special Conflicts of Interest Act Review Committee recommend that the title of Ethics Commissioner be changed to Conflict of Interest Commissioner.

October 24, 2013

- **MOVED by** Ms Blakeman that the Select Special Conflicts of Interest Act Review Committee include a list of all motions defeated by the Committee in its final report to the Legislative Assembly.

  A recorded vote was requested
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Fenske, Johnson, McDonald, Young

- **MOVED by** Ms Notley that the Select Special Conflicts of Interest Act Review Committee recommend that the definition of a "private interest" found in the Conflicts of Interest Act be amended to read as follows:
  1 (g) "private interest" does not include:
  (i) an interest in a matter
  (A) that is of general application, or
  (B) that concerns the remuneration and benefits of a Member;
  (ii) an interest that is trivial;
  (iii) an interest of a Member relating to publicly-traded securities in the Member's blind trust;
  (iv) an interest that affects a person as one of a broad class of the public, except where
  (A) the Member, a person directly associated with the Member, or the Member's minor or adult child, gains a direct benefit exceeding other members of the class, or where
  (B) the activities of the Member are so closely linked to the interest of the person that it gives rise to the perception of a conflict of interest, unless the matter has previously been raised by other members of that class;

  A recorded vote was requested.
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Fenske, Johnson, McDonald, Young

- **MOVED by** Ms Notley that the Select Special Conflicts of Interest Act Review Committee recommend that section 28(3) of the Conflicts of Interest Act be amended to read as follows:
  If in the report from the Ethics Commissioner the Ethics Commissioner has found that a Member or former Minister has breached this Act, the Legislative Assembly shall debate and vote on the report within 15 days after the tabling of the report, or any other period that is determined by a resolution of the Legislative Assembly.

  A recorded vote was requested.
  For the motion: Blakeman, Notley, Saskiw, Wilson
  Against the motion: Dorward, Fenske, Johnson, McDonald, Young

Appendix C: Minority Report – Rachel Notley, MLA

The NDP Caucus participated in the Select Special Committee on the Review of the Conflict of Interest Act of Alberta throughout the summer and fall of 2013. There were a number of improvements that could have been made to this legislation to increase its relevance, efficacy and credibility. The majority of the Select Special Committee rejected most of these proposals. As such the NDP Caucus is presenting this minority report, which outlines changes that we believe are required in the interests of preventing conflict of interest situations in Alberta.

Senior Officials

Our current conflict of interest legislation is premised on the recommendations of the Tupper Report written in 1996. One of the key issues addressed by that Report at the time was the role of senior officials. At page 49 of that report, the authors review the regime which governs conflict of interest concerns around senior officials in Alberta. They conclude as follows:

> The panel concludes that the framework of controls over appointed officials in the government of Alberta requires significant changes. Without such changes, the "Integrity in Government" policy that we are proposing will be deficient.

The legislation that originated from this report failed to address this problem. Seventeen years later, the system in place governing conflicts of interest for senior officials remains deeply inadequate. While staff of the Premier's Office have been included in the scope of the legislation, the number of senior officials exempted from its coverage has grown, along with their power and the amount of public dollars they administer.

The majority of the Committee approved two very modest improvements to this situation. First, the Committee recommended moving the Fowler Memo into legislation, meaning the less stringent requirements contained in the memo cannot be watered down further without legislative change. Second, by including post-employment restrictions, those restrictions are accorded the weight of legislative authority and fall within the enforcement jurisdiction of the Commissioner. However, the post-employment restrictions themselves are not sufficient. Furthermore, neither the Fowler Memo nor the post-employment restrictions will apply to a broad category of senior officials who have always been exempt from these measures. This group includes very significant officials. For instance, neither the Official Administrator of Alberta Health Services (an organization administering over $13 billion dollars of public money every year) nor the Chief Executive Officer of the Alberta Energy Regulator (the sole agency responsible for protecting Alberta's air, land, and water from the impact of industrial effects arising from energy extraction or production) are covered by these rules surrounding conflict of interest arising from personal financial interests or from prohibitions on post employment activity with agencies over whom they had authority or financial control.

Definition of Private Interest

Two weeks before completion of the Act review by the Select Special Committee, the Office of the Ethics Commissioner issued two decisions related to breaches of the Act by a government Member of the Legislative Assembly. In one of those decisions the Commissioner determined the Member in question had not breached Section 3 of the Act. The applicable portion of that section of the Act currently reads in part:

> 3. A member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

In that particular case, the Commissioner found that the Member had definitely used his office and powers to seek to influence the government to amend the law related to builders' liens. The Commissioner also found that the Member's construction company had been the defendant in several lawsuits where builders' liens had been filed against the Member's company.

Notwithstanding that a reasonable person would clearly conclude that the Member's private interest in the legality of builder's liens was specifically elevated due to his personal financial situation, the Commissioner found that this set of facts did not amount to a "private interest" under section 3 of the Act.

"Private Interest" under the Act is currently defined as follows:

> **Interpretation**
> **1(1)** In this Act,
>
> g) "private interest" does not include the following:
>
> (i) an interest in a matter
>
> (A) that is of general application,
>
> (B) that affects a person as one of a broad class of the public, or
>
> (C) that concerns the remuneration and benefits of a Member;
>
> (ii) an interest that is trivial;
>
> (iii) an interest of a Member relating to publicly-traded securities in the Member's blind trust;

The commissioner applied the facts of the case to the definition of Private Interest in Section 1(1)(g)(i)(B) and concluded that the member had not breached the Act. The rationale is as follows:

> The changes proposed by Member Sandhu to the Builders' Lien Act would, if enacted, affect all aspects of the construction industry, whether positively or negatively, as well as every Albertan holding title to real property. This is a very broad class. (pg. 5)

It is the view of the NDP Caucus that this interpretation of "private interest" serves to render Section 3 of the Conflict of Interest Act meaningless. The fact of the matter is that by virtue of their dealings with legislation and regulation as part of their job description, it is almost always going to be the case that the actions of Members will impact a class of people that goes beyond their simple private interest.

In contrast, it is our view that a conflict of interest appears if the Member makes a decision that impacts a large class of people, not on the basis of a good faith belief of what constitutes the overall public interest, but rather on the basis of their own specific financial interest. That is the classic case of conflict of interest—and such practices must be eliminated from our system of

government. Instead, the decision referenced above, accomplishes the opposite: It eliminates the prohibition on classic cases of conflict of interest.

As there is no mechanism through which Members of the Assembly or the public can appeal such a poorly reasoned decision, the NDP Caucus can only work to change the legislation in the hopes that the rationale used in this decision can never again be applied to our conflict of interest deliberation. As such we proposed an amendment in an attempt to address this problem:

> (iv) an interest that affects a person as one of a broad class of the public, except where
>
> > (A) the Member, a person directly associated with the Member, or the Member's minor or adult child, gains a direct benefit exceeding other members of the class, or where
> >
> > (B) the activities of the Member are so closely linked to the interest of the person that it gives rise to the perception of a conflict of interest, unless the matter has previously been raised by other members of that class;

Unfortunately, the majority members of the Committee rejected it. The outcome, in our view, is that one of the most fundamental components of our conflict of interest legislation has been eliminated from the Act through both the Commissioner's interpretation and the Committee majority's refusal to amend the legislation.

Other Issues

While it is our view that the failure to deal with the two forgoing issues is fatal to the credibility of the legislation as a whole, there are other elements of the legislation that also require attention, if and when the government chooses to address the serious shortfalls noted above.

Name of Ethics Commissioner – Pursuant to section 33 of the Conflicts of Interest Act, the Lieutenant Governor in Council on recommendation of the Legislative Assembly appoints an officer of the Legislature who is called the Ethics Commissioner. However, during the course of our deliberations we heard from many parties that the Act itself does not convey the authority for overseeing the ethical conduct of Members of the Legislative Assembly, their staff, or Senior Officials. Rather, the Act merely purports to regulate and limit actions which could lead to or be associated with a financial conflict of interest. Members of the committee heard that the Commissioner's office hears from Albertans concerned about the ethical conduct of their elected officials. The Commissioners office reported that they sometimes played a referral role although they were sometimes unable to point to an alternative agency which could respond to constituents' complaints.

It is our view that these circumstances serve primarily to confuse and, ultimately, frustrate Albertans who are directly affected by the alleged or perceived unethical conduct, while also providing a false sense of security to the remainder of Albertans. As such, we agree with the submissions that suggested the name of the Commissioner should be changed from 'Ethics Commissioner' to 'Conflict of Interest Commissioner.' It is worth noting that former Commissioner Clark also recommended this change some years ago.

Separation of Ethics Commissioner's Roles – The Committee heard from both the Commissioner's Office as well as other parties that the Commissioner performs two roles: (1) acting as advisor and counselor to Members and (2) conducting investigations of Members' conduct, determining breaches, and recommending sanctions. The Commissioner himself

argued against being given the authority to commence an investigation on his own as he believed this would have a chilling effect on his relationship with members and the openness with which they approached him.

These concerns have merit. However, it is our view that the answer is not to limit the investigatory authority of the Commissioner. Rather the answer is to divide the duties between two officers – one ethics advisor responsible for educating and counselling Members, and one Commissioner responsible for overseeing and enforcing the Act. Through this revised structure, MLAs would receive the benefit of informed and credible counsel while Albertans would receive the benefit of objective and independent oversight and enforcement.

Legislative Authority to Debate and Vote on Commissioner's Investigation Reports – In the course of discussing whether it was appropriate to introduce judicial oversight of Commissioner decisions into the legislation akin to the same oversight mechanism which exists in the federal legislation, Committee members were repeatedly reminded by staff of the Commissioner's Office that a provision of that sort would undermine the legislative privilege of the Assembly and its members to oversee its own officer. However, as things stand now, that privilege is too limited. Section 28(3) of the Conflicts of Interest Act states in part:

> If in the report from the Ethics Commissioner the Ethics Commissioner has found that a Member or former Minister has breached this Act, and the Ethics Commissioner has recommended a sanction, the Legislative Assembly shall debate and vote on the report within 15 days after the tabling of the report...

The difficulty with this section is that in the twenty years since this Act was introduced, there have been 25 investigation reports, including 10 reports that concluded a breach had occurred. Not one report has included a recommendation that a sanction be imposed. As such, an investigation report produced by the Commissioner has never come before the Assembly for debate. As a result, the NDP Caucus proposed an amendment to remove the requirement that there be a sanction first before a matter comes before the Assembly. This amendment was rejected by the majority of the committee. As a result, based on past practice, there is no current mechanism for the decisions of the Commissioner to be reviewed.

Commissioner's Authority to Grant Exemptions—Under section 31(3), the Commissioner has the authority to exempt former Ministers from observing the twelve-month period after leaving office in which they are prohibited from accepting a contract or benefit from a department or Provincial agency with which they had significant dealings. A similar exemption provision is included in Part 6.1 with respect to former political staff members.

The power of exemption has caused significant debate, particularly in 2012 when the Commissioner approved a former Minister's employment following his election defeat. At the time, the Commissioner stated publicly that the former Minister was "within the family, the government family." When opposition Members sought an emergency debate in the Legislature regarding the Commissioner's actions, the Speaker of the Assembly ruled against the motion and stated that this Committee's proceedings would provide "plenty of opportunities during that review to raise any concerns regarding the provisions contained in the Conflicts of Interest Act."

Unfortunately, the majority Members of the Committee rejected attempts to remove the Commissioner's unreasonable authority to grant exemptions to former Ministers. The NDP Caucus believes that section 31(3) should be amended to remove the ability of the Commissioner to provide an exemption to the cooling-off period for former Ministers.

Cooling Off Period—The Act currently states, under Parts 6 and 6.1 respectively, that former Ministers shall observe a twelve-month cooling off period while former political staff members shall observe a six-month cooling off period. Alberta's current cooling-off periods are amongst the lowest in the country, and the enforcement of these periods is further undermined by the presence of the exemption provisions in the Act.

The NDP Caucus believes the cooling-off period should be twelve months for all former Ministers, former political staff members, and senior officials, without exception.

Appendix D: Written Submissions to the Committee

Name	Organization
Judy Lapointe	Private citizen
Norman Pickell	Office of the Integrity Commissioner of Nunavut
Shayne Saskiw and Jeff Wilson	MLAs, Wildrose caucus
Barry Day	Office of the Deputy Minister of Alberta Culture
Alastair Lucas	Sheldon Chumir Foundation for Ethics in Leadership
David Morhart	Office of the Deputy Minister of Alberta Enterprise and Advanced Education
C. Peter Watson	Office of the Deputy Minister of Executive Council
Neil Wilkinson	Office of the Ethics Commissioner of Alberta
Nathalie Des Rosiers and Cara Faith Zwibel	Canadian Civil Liberties Association
Dana Woodworth	Office of the Deputy Minister of Alberta Environment and Sustainable Resource Development

Appendix E: Oral Presentations to the Committee

Name	Organization
Arthur Schafer	Centre for Professional and Applied Ethics, University of Manitoba
Dan Shapiro	Sheldon Chumir Foundation for Ethics in Leadership

Appendix F: List of Senior Officials

"Senior official" is defined in the *Code of Conduct and Ethics for the Public Service of Alberta*[20] as an individual appointed pursuant to OC 188/97 (as amended) and the *Public Service Act*. The current list of senior officials can be found in Schedule 2 of OC 286/2013, the most recent version of OC 188/97:

Alberta Representative in Asia
Alberta Representative in London
Alberta Representative in Ottawa
Alberta Representative in Washington, DC
Chair, Alberta Utilities Commission
Chief Executive Officer, Alberta Gaming and Liquor Commission
Chief Executive Officer, Environmental Monitoring
Chief of Staff, Office of the Premier
Deputy Attorney General
Public Service Commissioner
Chair, Labour Relations Board
Chair, Land Compensation Board
Chair, Natural Resources Conservation Board
Chair, Surface Rights Board
Chief Appeals Commissioner, Appeals Commission for Workers' Compensation
Chief Delivery Officers, Health and Human Services
Chief Strategy Officers, Health and Human Services
Chief of the Commission and Tribunals, Alberta Human Rights Commission
Controller
Deputy Chief, Policy Coordination
Deputy Clerk of the Executive Council
Deputy Secretary to Cabinet
Director of Communications, Office of the Premier
Director of Operations, Office of the Premier
Executive Director, Office of the Premier, Southern Alberta
Managing Director, Alberta Emergency Management Agency
Managing Director, Public Affairs Bureau
Principal Secretary, Office of the Premier
Chief Advisor on Negotiations
Vice-Chairs, Alberta Utilities Commission
Members, Alberta Human Rights Commission
Members, Alberta Utilities Commission
Members, Natural Resources Conservation Board
Vice-Chairs, Labour Relations Board
Vice-Chairs, Surface Rights Board
Appeals Commissioners, Appeals Commission for Workers' Compensation
Members, Land Compensation Board
Members, Surface Rights Board

[20] OC 96/98, enacted pursuant to ss. 23 and 24 of the *Public Service Act*, RSA 2000, c. P-42.